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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 9 and 35

[NRC–2018–0303]

RIN 3150–AK27

Social Security Number Fraud Prevention

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of August 17, 2020, for the direct final rule that was published in the **Federal Register** on June 2, 2020. This direct final rule amends the NRC's regulations to comply with the Social Security Number Fraud Prevention Act, signed on September 15, 2017.

DATES: The effective date of August 17, 2020, for the direct final rule published June 2, 2020 (85 FR 33527), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2018–0303 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0303. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 the **SUPPLEMENTARY INFORMATION** section.
- *Attention:* The Public Document Room (PDR), where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alexa Sieracki, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7509, email: *Alexa.Sieracki@nrc.gov*.

SUPPLEMENTARY INFORMATION: On June 2, 2020 (85 FR 33527), the NRC published a direct final rule amending its regulations in parts 9 and 35 of title 10 of the *Code of Federal Regulations* to specify when inclusion of an individual's Social Security account number (SSN) is necessary, include instructions for the partial redaction of SSNs, where feasible, and provide a requirement that SSNs not be visible on the outside of any package sent through the mail.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on August 17, 2020. The NRC received two comments from the public that supported the proposed changes to the regulations. Because no significant adverse comments were received, the direct final rule will become effective as scheduled.

Dated July 17, 2020.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–15916 Filed 7–23–20; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

RIN 3064–ZA17

Notice of Rescission of the Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of rescission of statement of policy.

SUMMARY: The FDIC has rescinded the Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products.

DATES: July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Ardie Hollifield, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–6638; Karen Currie, Senior Examination Specialist, Division of Risk Management Supervision, (202) 898–3981; Benjamin K. Gibbs, Counsel, Legal Division, (202) 898–6726, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, TDD users may contact (202) 925–4618.

SUPPLEMENTARY INFORMATION: On November 26, 2013, the FDIC issued final supervisory guidance entitled ''Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products'' (2013 Deposit Advance Guidance), which addressed safe and sound banking practices and consumer protection in connection with deposit advance products.[1] On May 20, 2020, the FDIC, Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, and the National Credit Union Administration issued *Interagency Lending Principles for Offering Responsible Small-Dollar Loans* (*Interagency Lending Principles*) to encourage supervised banks, savings associations, and credit unions (collectively, ''financial institutions'') to offer responsible small-dollar loans to customers for both consumer and small business purposes. As discussed in its Financial Institution Letter transmitting the *Interagency Lending Principles* (FIL–58–2020), the FDIC has rescinded the

[1] 78 FR 70552–01 (November 26, 2013).

2013 Deposit Advance Guidance [2] and replaced it with interagency guidance to provide uniform principles for all financial institutions.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 9, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–15224 Filed 7–23–20; 8:45 am]

BILLING CODE 6714–01–P

[2] FIL–58–2020, Interagency Guidance for Responsible Small-Dollar Loans (May 20, 2020).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0705; Product Identifier 2017–SW–105–AD; Amendment 39–21187; AD 2020–16–03]

RIN 2120–AA64

Airworthiness Directives; PZL Swidnik S.A. Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for PZL Swidnik S.A. (PZL) Model PZL W–3A helicopters. This AD requires establishing a life limit for certain horizontal stabilizers and removing from service any affected horizontal stabilizer in accordance with that life limit. This AD was prompted by the discovery of an error in the Airworthiness Limitations for PZL Model PZL W–3A helicopters. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD becomes effective August 10, 2020.

The FAA must receive comments on this AD by September 8, 2020.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0705; 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 AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact WSK PZL-Świdnik S.A., Al. Lotników Polskich 1, 21–045 Świdnik, Poland; telephone +48 81722 6112; or at *www.pzl.swidnik.pl.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Kristin Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, the FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time.

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 file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. The FAA will consider all comments received and may conduct additional rulemaking based on those comments.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kristin Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued AD No. 2017–0057, dated April 6, 2017, to correct an unsafe condition for PZL Model PZL W–3A helicopters. EASA advises of previous AD action requiring maintenance tasks and limitations in Revision 11 of Chapter 4 Airworthiness Limitations of PZL W–3A Instructions for Continued Airworthiness of Maintenance Manual AE 30.04.20.1 MM (English) and AE 30.04.20.1 IOT (Polish). Since then, EASA advises of revised maintenance tasks and more restrictive limitations in Revision 13 of AE 30.04.20.1 MM (English) and Revision 12 of AE 30.04.20.1 IOT (Polish). EASA states that these maintenance tasks and limitations are required for continued airworthiness and failure to comply with them could result in an unsafe condition.

Additional review after the EASA AD was issued determined that previous revisions of AE 30.04.20.1 MM (English) included an error for horizontal stabilizer part number (P/N) 30.13.600.00.04. Introduced in Revision 9, dated January 2012, AE 30.04.20.1

MM (English) stated the life limit for horizontal stabilizer P/N 30.13.600.00.04 up to serial number 06.001. The life limit should have been for serial number 06.001 and subsequent instead. This error was corrected in Revision 13 of AE 30.04.20.1 MM (English).

FAA's Determination

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

Related Service Information

PZL has issued Chapter 4 Airworthiness Limitations of PZL W–3A Instructions for Continued Airworthiness of Maintenance Manual AE 30.04.20.1 MM, Revision 13, dated January 2017. This revision of the service information includes establishing a life limit for horizontal stabilizer P/N 30.13.600.00.04 serial number 06.001 and subsequent.

AD Requirements

This AD establishes a life limit for horizontal stabilizer P/N 30.13.600.00.04 serial number 06.001 and subsequent by requiring, before further flight, removing from service any horizontal stabilizer that has reached 15 or more years since the date of manufacture. Thereafter, this AD also requires removing from service any horizontal stabilizer before reaching 15 years since the date of manufacture.

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

There are no costs of compliance with this AD because there are no helicopters with this type certificate on the U.S. Registry.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (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.

There are no helicopters with this type certificate on the U.S. Registry. Therefore, notice and opportunity for prior public comment are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

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 the product identified in this rulemaking action.

Regulatory Findings

The FAA determined that 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, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–16–03 PZL Swidnik S.A.: Amendment 39–21187; Docket No. FAA–2020–0705; Product Identifier 2017–SW–105–AD.

(a) Applicability

This AD applies to PZL Swidnik S.A. Model PZL W–3A helicopters, certificated in any category, with a horizontal stabilizer part number 30.13.600.00.04 with a serial number 06.001 and subsequent installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a horizontal stabilizer remaining in service beyond its life limit. This condition could result in failure of the horizontal stabilizer and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective August 10, 2020.

(d) Compliance

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

(e) Required Actions

Before further flight, remove from service any horizontal stabilizer that has reached 15 or more years since date of manufacture. Thereafter, remove from service any horizontal stabilizer before reaching 15 years since date of manufacture.

(f) Alternative Methods of Compliance (AMOCs)

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

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

(g) Additional Information

(1) Chapter 4 Airworthiness Limitations of PZL W–3A Instructions for Continued Airworthiness of Maintenance Manual AE 30.04.20.1 MM, Revision 13, dated January 2017, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact WSK PZL-Świdnik S.A., Al. Lotników Polskich 1, 21–045 Świdnik, Poland; telephone +48 81722 6112; or at *www.pzl.swidnik.pl.* You may view a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2017–0057, dated April 6, 2017. You may view the EASA AD on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–0705.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5510, Horizontal Stabilizer Structure.

Issued on July 20, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–16031 Filed 7–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0282; Airspace Docket No. 19–ANM–31]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Mountain Home, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at the Mountain Home Air Force Base Airport. This action also modifies Class E airspace, designated as a surface area. Additionally, this action modifies Class E airspace, extending upward from 700 feet above the surface. This action also modifies Class E airspace, extending upward from 1,200 feet above the surface. Further, this action removes Mountain Home Municipal Airport from the legal description of the Class E airspace extending upward from 700 feet or more above the surface. Lastly, this action implements two administrative amendments to the airspace legal descriptions.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class D and Class E airspace at Mountain Home Air Force Base Airport, Mountain Home, ID, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 20451; April 13, 2020) for Docket No. FAA–2020–0282 to modify Class D and Class E at Mountain Home Air Force Base Airport, Mountain Home, ID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D, E2, and E5 airspace designations are published in paragraphs 5000, 6002, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace at the Mountain Home Air Force Base Airport. This airspace area is described as follows: That airspace extending upward from the surface to and including 5,500 feet MSL within a 5-mile radius of Mountain Home AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

This action also modifies Class E airspace, designated as a surface area, to match the new Class D dimensions. This airspace area is described as follows: That airspace extending upward from the surface within a 5-mile radius of Mountain Home AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Additionally, this action modifies Class E airspace extending upward from 700 feet above the surface. This airspace areas is described as follows: That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Mountain Home AFB.

This action also modifies Class E airspace extending upward from 1,200 feet above the surface. This airspace area is described as follows: That airspace extending upward from 1,200

feet above the surface within a 30-mile radius of Mountain Home AFB.

Further, this action removes Mountain Home Municipal Airport from the legal description of the Class E airspace extending upward from 700 feet or more above the surface.

Lastly, this action implements two administrative amendments to the airspace legal descriptions. The term ''Airport/Facility Directory'' in the Class D description is updated to ''Chart Supplement''. The Class E airspace, designated as a surface area, is part-time. The following language has been added to the legal description: This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM ID D Mountain Home, ID [Amended]

Mountain Home AFB, ID
(Lat. 43°02′37″ N, long. 115°52′21″ W)

That airspace extending upward from the surface to and including 5,500 feet MSL within a 5-mile radius of Mountain Home AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM ID E2 Mountain Home, ID [Amended]

Mountain Home AFB, ID
(Lat. 43°02′37″ N, long. 115°52′21″ W)

That airspace extending upward from the surface within a 5-mile radius of Mountain Home AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM ID E5 Mountain Home, ID [Amended]

Mountain Home AFB, ID
(Lat. 43°02′37″ N, long. 115°52′21″ W)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Mountain Home AFB; and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of Mountain Home AFB.

Issued in Seattle, Washington, on July 20, 2020.

B.G. Chew,

Acting Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–16025 Filed 7–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0396; Airspace Docket No. 20–AGL–21]

RIN 2120–AA66

Amendment of Class D and Class E Airspace, Revocation of Class E Airspace, and Establishment of Class E Airspace; Multiple Ohio Towns

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace and Class E surface airspace at Wright-Patterson AFB, Dayton, OH, and Wilmington Air Park, Wilmington, OH; revokes the Class E airspace designated as an extension to Class D and Class E surface area at Wilmington Air Park; amends the Class E airspace extending upward from 700 feet above the surface at multiple Ohio airports; and establishes Class E airspace extending upward from 700 feet above the surface at Springfield-Beckley Municipal Airport, Springfield, OH. This action is the result of airspace reviews caused by the decommissioning of the Springfield VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program, and the decommissioning of the Springfield localizer and glideslope at Springfield-Beckley Municipal Airport. The names and geographic coordinates of multiple Ohio airports are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact

the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace and Class E surface airspace at Wright-Patterson AFB, Dayton, OH, and Wilmington Air Park, Wilmington, OH; revokes the Class E airspace designated as an extension to Class D and Class E surface area at Wilmington Air Park; amends the Class E airspace extending upward from 700 feet above the surface at Dayton-Phillipsburg Airport, Dayton, OH; Dayton-Wright Brothers Airport, Dayton, OH; Greene County-Lewis A. Jackson Regional Airport, Dayton, OH; James M. Cox Dayton International Airport, Dayton, OH; Wright-Patterson AFB; Grimes Field, Urbana, OH; and Wilmington Air Park; and establishes Class E airspace extending upward from 700 feet above the surface at Springfield-Beckley Municipal Airport, Springfield, OH, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 27334; May 8, 2020) for Docket No. FAA–2020–0396 to amend the Class D airspace and Class E surface airspace at Wright-Patterson AFB, Dayton, OH, and Wilmington Air Park, Wilmington, OH; revoke the Class E airspace designated as an extension to Class D and Class E surface area at Wilmington Air Park; amend the Class E airspace extending upward from 700 feet above the surface at Dayton-Phillipsburg Airport, Dayton, OH; Dayton-Wright Brothers Airport, Dayton, OH; Greene County-Lewis A. Jackson Regional Airport, Dayton, OH; James M. Cox Dayton International Airport, Dayton, OH; Wright-Patterson AFB; Grimes Field, Urbana, OH; and Wilmington Air Park; and establish Class E airspace extending upward from 700 feet above the surface at Springfield-Beckley Municipal Airport, Springfield, OH. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Amends the Class D airspace at Wright-Patterson AFB, Dayton, OH, by removing the Patterson VORTAC and the associated extension, as they are no longer required; adds an extension 1.2 miles each side of the 046° bearing from the airport extending from the 4.6-mile radius to 5.2 miles northeast of the airport; adds an extension 1.2 miles each side of the 228° bearing form the airport extending from the 4.6-mile radius to 4.8 miles southwest of the airport; updates the header of the airspace legal description to Dayton, OH, (previously Dayton, Wright-Patterson AFB, OH) to coincide with the FAA's aeronautical database; removes the city name associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; and replaces the outdated term ''Airport/Facility Directory'' with ''Chart Supplement;''

Amends the Class D airspace to within a 4.5-mile (increased from a 4.2-mile) radius of Wilmington Air Park, Wilmington, OH; removes the cities associated with the airports in the airspace legal description to comply with changes to FAA Order 7400.2M; and replaces the outdated term ''Airport/Facility Directory'' with ''Chart Supplement;''

Amends the Class E surface airspace at Wright-Patterson AFB, Dayton, OH, by removing the Patterson VORTAC and the associated extension, as they are no longer required; adds an extension 1.2 miles each side of the 046° bearing from the airport extending from the 4.6-mile radius to 5.2 miles northeast of the airport; adds an extension 1.2 miles each side of the 228° bearing form the airport extending from the 4.6-mile radius to 4.8 miles southwest of the airport; updates the header of the airspace legal description to Dayton, OH, (previously Dayton, Wright-Patterson AFB, OH) to coincide with the FAA's aeronautical database; removes the city name associated with the airport to comply with changes to FAA Order 7400.2M; and replaces the outdated term ''Airport/Facility Directory'' with ''Chart Supplement;''

Amends the Class E surface airspace to within a 4.5-mile (increased from a 4.2-mile) radius of Wilmington Air Park, Wilmington, OH; removes the extensions southwest and northeast of the airport, as they are no longer needed; removes the cities associated with the airports in the airspace legal description to comply with changes to FAA Order 7400.2M; and replaces the outdated term ''Airport/Facility Directory'' with ''Chart Supplement;''

Removes the Class E airspace designated as an extension to Class D and Class E surface areas at Wilmington Air Park, Wilmington, OH, as it is no longer needed;

Amends the Class E airspace extending upward from 700 feet above the surface at Dayton-Phillipsburg Airport (previously Phillipsburg Airport), Dayton, OH by updating the name of the airport to coincide with the FAA's aeronautical database; updates the header of the airspace legal description to Dayton, OH, (previously Phillipsburg, OH) to coincide with the FAA's aeronautical database; and removes the exclusionary language, as it is no longer required;

Amends the Class E airspace extending upward from 700 feet above

the surface to within a 6.5-mile (decreased from a 6.6-mile) radius at Dayton-Wright Brothers Airport, Dayton, OH; removes the extension northeast of the airport associated with the Runway 20 Localizer, as it is no longer required; removes the exclusionary language, as it is no longer required; adds an extension within 1.6 miles each side of the 261° bearing from the Onida NDB extending from the 6.5-mile radius of the airport to 9.1 miles west of the airport; and updates the name and the geographic coordinates of Dayton-Wright Brothers Airport (previously Dayton General Airport South) to coincide with the FAA's aeronautical database;

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (increased from a 6.3-mile) radius at Greene County-Lewis A. Jackson Regional Airport, Dayton, OH; removes the extension northeast of the airport, as it is no longer needed; adds an extension within 1 mile each side of the 243° bearing from the airport extending from the 6.5-mile radius to 8.1 miles southwest of the airport; removes the exclusionary language, as it is no longer required; updates the header of the airspace legal description to Dayton, OH, (previously Dayton, Greene County Airport, OH) to coincide with the FAA's aeronautical database; removes the city associated with the airport to comply with changes to FAA Order 7400.2M; and updates the name and geographic coordinates of the Greene County-Lewis A. Jackson Regional Airport (previously Greene County Airport) to coincide with the FAA's aeronautical database;

Amends the Class E airspace extending upward from 700 feet above the surface at Dayton, OH, by removing the bounded area of ''. . .bounded by a line beginning at lat. 39°59′00″ N., long. 83°40′00″ W.; to lat. 39°55′00″ N., long. 83°37′00″ W.; to lat. 39°45′00″ N., long. 83°43′00″ W.; to lat. 39°39′00″ N., long. 84°07′00″ W.; to lat. 39°45′00″ N., long. 84°24′00″ W.; to lat. 39°49′00″ N., long. 84°27′00″ W.; to lat. 40°04′06″ N., long. 84°17′45″ W.; to the point of beginning'' and replaces it as follows: within a 7.5-mile radius of James M. Cox Dayton International Airport, Dayton, OH; and within 3 miles each side of the 235° bearing from James M. Cox Dayton International Airport: RWY 24R–LOC extending from the 7.5-mile radius of James M. Cox Dayton International Airport to 13.2 miles southwest of the James M. Cox Dayton International Airport: RWY 24R–LOC; and within a 7.1-mile radius of Wright Patterson-AFB, Dayton, OH;

Establishes Class E airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Springfield-Beckley Municipal Airport, Springfield, OH (This airspace was previously covered by the Dayton, OH, Class E airspace extending upward from 700 feet above the surface, but the airspace legal descriptions are being separated to comply with FAA Order 7400.2M and the FAA's aeronautical database.); and within 4 miles each side of the 056° bearing from the Clark County NDB extending from the 6.9-mile radius of the airport to 10.7 miles northeast of the Clark County NDB;

Amends the Class E airspace extending upward from 700 feet above the surface within a 6.5-mile (decreased from an 8.2-mile) radius of Grimes Field, Urbana, OH; removes the city associated with the airport to comply with changes to FAA Order 7400.2M; updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the exclusionary language, as it is no longer needed;

And amends the Class E airspace extending upward from 700 feet above the surface at Wilmington Air Park by removing the Midwest VOR/DME and associated extensions from the airspace legal description, as they are no longer needed; and adds an extension within 4 miles each side of the 037° bearing from the airport extending from the 7-mile radius to 10.3 miles northeast of the airport; and removes the city associated with the airport to comply with changes to FAA Order 7400.2M.

Subsequent to publication of the NPRM, the FAA discovered that the geographic coordinates of the Onida NDB contained in the Dayton-Wright Brothers Airport, Dayton, OH, Class E airspace extending upward from 700 feet above the surface airspace legal description were incorrect. They have been corrected in this action.

This action is the result of airspace reviews caused by the decommissioning of the Springfield VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program, and the decommissioning of the Springfield localizer and glideslope which provided navigation information for the instrument procedures at Springfield-Beckley Municipal Airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL OH D Dayton, OH [Amended]

Wright-Patterson AFB, OH
(Lat. 39°49′33″ N, long. 84°02′46″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.6-mile radius of Wright-Patterson AFB, and within 1.2 miles each side of the 046° bearing from the airport extending from the 4.6-mile radius to 5.2 miles northeast of the airport, and within 1.2 miles each side of the 228° bearing from the airport extending from the 4.6-mile radius to 4.8 miles southwest of the airport excluding that airspace within the Dayton, James M. Cox-Dayton International Airport, OH, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

AGL OH D Wilmington, OH [Amended]

Wilmington Air Park, OH
(Lat. 39°25′41″ N, long. 083°47′32″ W)
Hollister Field Airport, OH
(Lat. 39°26′15″ N, long. 083°42′30″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.5-mile radius of the Wilmington Air Park, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AGL OH E2 Dayton, OH [Amended]

Wright-Patterson AFB, OH
(Lat. 39°49′33″ N, long. 84°02′46″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.6-mile radius of Wright-Patterson AFB, and within 1.2 miles each side of the 046° bearing from the airport extending from the 4.6-mile radius to 5.2 miles northeast of the airport, and within 1.2 miles each side of the 228° bearing from the airport extending from the 4.6-mile radius to 4.8 miles southwest of the airport excluding that airspace within the Dayton, James M. Cox-Dayton International Airport, OH, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

AGL OH E2 Wilmington, OH [Amended]

Wilmington Air Park, OH
(Lat. 39°25′41″ N, long. 083°47′32″ W)
Hollister Field Airport, OH
(Lat. 39°26′15″ N, long. 083°42′30″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.5-mile radius of the Wilmington Air Park, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AGL OH E4 Wilmington, OH [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL OH E5 Dayton, OH [Amended]

Dayton-Phillipsburg Airport, OH
(Lat. 39°54′48″ N, long. 84°24′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Dayton-Phillipsburg Airport.

AGL OH E5 Dayton, OH [Amended]

Dayton-Wright Brothers Airport, OH
(Lat. 39°35′20″ N, long. 84°13′30″ W)
Onida NDB
(Lat. 39°34′41″ N, long. 84°19′25″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Dayton-Wright Brothers Airport, and within 1.6 miles each side of the 261° bearing from the Onida NDB extending from the 6.5-mile radius of the airport to 9.1 miles west of the airport.

AGL OH E5 Dayton, OH [Amended]

Greene County-Lewis A. Jackson Regional Airport, OH
(Lat. 39°41′27″ N, long. 83°59′34″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Greene County-Lewis A. Jackson Regional Airport, and within 1 mile either side of the 243° bearing from the airport extending from the 6.5-mile radius to 8.1 miles southwest of the airport.

AGL OH E5 Dayton, OH [Amended]

James M. Cox Dayton International Airport, OH
(Lat. 39°54′08″ N, long. 84°13′10″ W)
Wright-Patterson AFB, OH
(Lat. 39°49′33″ N, long. 84°02′46″ W)
James M. Cox Dayton International Airport: RWY 24R–LOC
(Lat. 39°53′37″ N, long. 84°14′57″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of James M. Cox Dayton International Airport, and within 3 miles each side of the 235° bearing from the James M. Cox Dayton International Airport: RWY 24R–LOC extending from the 7.5-mile radius of James M. Cox Dayton International Airport to 13.2 miles southwest of the James M. Cox Dayton International Airport: RWY 24R–LOC, and within a 7.1-mile radius of Wright Patterson AFB.

* * * * *

AGL OH E5 Springfield, OH [Establish]

Springfield-Beckley Municipal Airport, OH
(Lat. 39°50′25″ N, long. 83°50′25″ W)
Clark County NDB
(Lat. 39°52′25″ N, long. 83°46′46″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Springfield-Beckley Municipal Airport, and within 4 miles each side of the 056° bearing from the Clark County NDB extending from the 6.9-mile radius of the Springfield-Beckley Municipal Airport to 10.7 miles from the Clark County NDB.

* * * * *

AGL OH E5 Urbana, OH [Amended]

Grimes Field, OH
(Lat. 40°07′57″ N, long. 83°45′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grimes Field.

* * * * *

AGL OH E5 Wilmington, OH [Amended]

Wilmington Air Park, OH
(Lat. 39°25′41″ N, long. 083°47′32″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Wilmington Air Park, and within 4 miles each side of the 037° bearing from the airport extending from the 7-mile radius to 10.3 miles northeast of the airport.

Issued in Fort Worth, Texas, on July 20, 2020.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–15946 Filed 7–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA–2014–0504; Amdt. No.: 121–384A]

RIN 2120–AJ87

Pilot Professional Development; Technical Amendment; Correction.

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

ACTION: Final rule; correction of a technical amendment.

SUMMARY: The FAA is correcting a final rule technical amendment published on June 30, 2020 (85 FR 39069). In that final rule, which became effective on the date of publication, the FAA corrected errors in regulatory cross references associated with the Pilot Professional Development final rule. The FAA inadvertently listed an incorrect amendment number for the final rule technical amendment. This document corrects that error.

DATES: July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Sheri Pippin, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8166; email: *sheri.pippin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) 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.'' Section 553(d)(3) of the APA requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

Because this action merely makes a correction to the amendment number of a published final rule technical amendment, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days.

Background

On February 25, 2020, the FAA published the Pilot Professional Development final rule (85 FR 10896). After that rule was published, the FAA discovered two minor errors in §§ 121.409 and 121.424 of Title 14 of the Code of Federal Regulations that required correction. Those errors were corrected in a technical amendment published June 30, 2020 (85 FR 39069). In the technical amendment, the FAA listed the amendment number as 121–282B.

Correction

In the final rule, FR Doc. 2020–12170, published on June 30, 2020, at 85 FR 39069, make the following correction:

1. On page 39069 in the heading of the final rule, revise ''Amdt. No. 121–282B'' to read ''121–384''.

Issued under authority provided by 49 U.S.C. 106(f), 106(g), 44701(a), and Sec. 206 of Public Law 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note) in Washington, DC, on July 9, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2020–15229 Filed 7–23–20; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 37

RIN Number 3038–AE79

Post-Trade Name Give-Up on Swap Execution Facilities

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is issuing a final rule to prohibit post-trade name give-up for swaps executed, pre-arranged, or pre-negotiated anonymously on or pursuant to the rules of a swap execution facility (SEF) and intended to be cleared. The final rule provides an exception for package transactions that include a component transaction that is not a swap intended to be cleared, including but not limited to U.S. Treasury swap spreads.

DATES: The effective date for this final rule is September 22, 2020. The compliance date for swaps subject to the trade execution requirement under section 2(h)(8) of the Commodity Exchange Act (CEA or Act) is November 1, 2020. The compliance date for swaps not subject to the trade execution requirement under section 2(h)(8) of the CEA is July 5, 2021.

FOR FURTHER INFORMATION CONTACT: Alexandros Stamoulis, Special Counsel, (646) 746–9792, *astamoulis@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005; Roger Smith, Special Counsel, (202) 418–5344, *rsmith@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661; Israel Goodman, Special Counsel, (202) 418–6715, *igoodman@cftc.gov,* Division of Market Oversight; or Vincent McGonagle, Principal Deputy Director, (202) 418–5387, *vmcgonagle@cftc.gov,* Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. November 2018 Request for Comment

On November 30, 2018, the Commission published in the **Federal Register** a request for comment regarding the practice of post-trade name give-up on SEFs (2018 RFC).[1] As described in the 2018 RFC, some SEFs facilitate post-trade name give-up by directly or indirectly disclosing the identities of swap counterparties to one another after a trade is matched anonymously. The 2018 RFC noted that a SEF may effectuate such disclosure through its own trade protocols or through a third-party service provider utilized to process and route transactions to a derivatives clearing organization (DCO) for clearing. In the 2018 RFC, the Commission questioned the necessity of the practice with respect to cleared swaps anonymously executed on a SEF. The Commission also summarized some of the general views on post-trade name give-up of various industry participants and requested public comments on the merits of the practice and whether the Commission should prohibit it.

The Commission received 13 comment letters in response to the 2018 RFC. Most commenters opposed the practice of post-trade name give-up for anonymously-executed swaps submitted to clearing, and requested that the Commission adopt a regulatory prohibition. The Securities Industry and Financial Markets Association (SIFMA) expressed support for the practice and concern about the effects of a prohibition. The views raised in those comment letters were considered and discussed by the Commission in a proposed rule on post-trade name give-up issued in December 2019.

B. December 2019 Proposed Rule

After considering the comments received in response to the 2018 RFC, on December 31, 2019, the Commission published in the **Federal Register** a proposed rule to prohibit post-trade name give-up for anonymously-executed and intended-to-be-cleared swaps (Proposal).[2] The Proposal prohibits a SEF from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap executed anonymously and intended to be cleared. The Proposal also requires SEFs to establish and enforce rules prohibiting any person from effectuating such a disclosure.

In the Proposal, the Commission reasoned that a prohibition on post-trade name give-up may (1) advance the statutory objectives of promoting swaps

[1] Post-Trade Name Give-up on Swap Execution Facilities, 83 FR 61571 (Nov. 30, 2018). ''Post-trade name give-up'' refers to the practice of disclosing the identity of each swap counterparty to the other after a trade has been matched anonymously.

[2] Post-Trade Name Give-up on Swap Execution Facilities, 84 FR 72262 (Dec. 31, 2019).

trading on SEFs and fair competition among market participants; (2) further the objectives underlying the prohibition against swap data repositories (SDRs) disclosing the identity of a counterparty to a swap that is anonymously executed and cleared in accordance with the Commission's straight-through processing (STP) requirements; and (3) promote impartial access on SEFs.[3]

The Commission requested comments on all aspects of the Proposal, and also solicited comments through targeted questions relating to whether and how the proposed rule, if adopted, (1) would advance the statutory and regulatory goals described above; (2) might impact aspects of market quality and liquidity; and (3) should be tailored. Overall, the Commission received comment letters on the Proposal from 20 different respondents: 13 public interest and industry groups; two global banks with affiliated swap dealers; two global market makers; a global asset manager; a SEF operator; and a third-party provider of derivatives trade processing services.[4] Additionally, Commission staff participated in several *ex parte* meetings concerning the proposal.[5] The Commission also consulted with the U.S. Securities and Exchange Commission and foreign regulators on the proposed rule.

II. Final Rule

After considering the public comments on the Proposal, the Commission is adopting the proposed regulations, with certain modifications and clarifications discussed below. Specifically, the Commission is amending its part 37 regulations to prohibit post-trade name give-up for swaps anonymously executed, pre-arranged, or pre-negotiated on or pursuant to the rules of a SEF and intended to be cleared. New § 37.9(d) prohibits a SEF from directly or indirectly disclosing the identity of a counterparty to any such swap, and requires a SEF to establish and enforce rules that prohibit any person from doing so.[6] The final rule, however, contains an exception for package transactions that include a component transaction that is not a swap intended to be cleared.

A. Statutory Authorities

CEA section 8a(5) authorizes the Commission to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.[7] The Commission believes that prohibiting the practice of post-trade name give-up for intended-to-be-cleared swaps is reasonably necessary to promote trading of swaps on SEFs and fair competition among market participants. The Commission also believes that post-trade name give-up for intended-to-be-cleared swaps is inconsistent with the requirement that SEFs provide market participants with impartial access to trading on SEFs, as well as the objectives underlying the prohibition against SDRs disclosing the identities of counterparties to swaps anonymously executed on a SEF and cleared in accordance with STP requirements.

1. Promoting Trading on SEFs and Pre-trade Price Transparency (CEA Section 5h(e))

CEA section 5h(e) establishes the statutory goal of the SEF regulatory regime to promote swaps trading on SEFs and promote pre-trade price transparency in the swaps market.[8] In the Proposal, the Commission stated that despite available liquidity for cleared products on certain SEF platforms, the range and number of active participants may be limited due to market participants' concerns about information leakage and anticompetitive behavior made possible by post-trade name give-up.[9] The Commission also stated that fully-anonymous trading (*i.e.,* without post-trade name give-up) would likely encourage more participants to trade on those platforms.[10] The Proposal requested public comments on how a prohibition on post-trade name give-up would impact trading and pre-trade price transparency on affected SEFs.

Several commenters on the Proposal stated that prohibiting post-trade name give-up would remove a significant barrier to increased participation on certain SEF platforms,[11] and that prohibiting the practice would lead to an increase in the number of participants trading on affected SEFs.[12] MFA, for example, stated that its members are ''eager'' to participate on affected SEFs and ''to have the ability to transact cleared swaps anonymously; similar to how they currently trade in other asset classes (*e.g.,* equities, futures, foreign exchange, and Treasuries, among others).'' [13] JPMorgan, on the other hand, opined that ''the more likely outcome of banning [post-trade name give-up] will be to *reduce overall* trading on SEFs, as dealers pull back from trading . . . .'' [14] Other commenters similarly argued that incumbent swap dealers may exit the market or reduce their trading.[15] ICI and MFA, however, characterized this outcome as ''unlikely.'' [16] MFA stated that competitive market forces would ensure that ''in the unlikely event an individual dealer reduced its offering, other dealers would quickly step into its place.'' [17] Asserting its experience as a ''top liquidity provider'' in SEF markets, Citadel stated that it does not expect a prohibition on post-trade name give-up to affect its liquidity provision on pre-trade disclosed platforms or its use of pre-trade anonymous trading protocols.[18] Citadel further asserted that ''other swap dealers share our view, as UBS has supported the prohibition and SIFMA indicated that the views among swap dealers 'are not uniform.' '' [19]

[3] *See* Proposal at 72265–72267.

[4] Comment letters were submitted by the following entities: Alternative Investment Management Association (AIMA) (Feb. 17, 2020); American Bankers Association (ABA) (Mar. 2, 2020); Americans for Financial Reform Education Fund (AFR) (Mar. 2, 2020); Bank Policy Institute (BPI) (Mar. 10, 2020); Better Markets, Inc. (Better Markets) (Mar. 2, 2020); Citadel and Citadel Securities (Citadel) (Letter 1: Mar. 2, 2020, and Letter 2: Apr. 21, 2020); Citibank, N.A. (Citi) (Mar. 2, 2020); Coalition for Derivatives End-Users (Mar. 2, 2020); CTC Trading Group, LLC (CTC) (Mar. 10, 2020); FIA Principal Traders Group (FIA PTG) (Mar. 2, 2020); Financial Services Forum (FSF) (Mar. 2, 2020); Healthy Markets Association (HMA) (Mar. 9, 2020); IHS Markit (Mar. 2, 2020); Investment Company Institute (ICI) (Mar. 2, 2020); JPMorgan Chase & Co. (JPMorgan) (Mar. 2, 2020); Managed Funds Association (MFA) (Mar. 2, 2020); SIFMA, on behalf of a majority of SIFMA's swap dealer members who have expressed a view (Mar. 2, 2020); SIFMA's Asset Management Group (SIFMA AMG) (Mar. 2, 2020); ICAP Global Derivatives Limited and tpSEF, Inc. (TP ICAP); and Vanguard (Mar. 2, 2020).

[5] *See* Comments for Proposed Rule 84 FR 72262, *available at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3066* (last retrieved June 23, 2020).

[6] The Commission notes that this rule does not prohibit a SEF from disclosing the identities of all of the participants on the SEF to all other participants. However, such disclosure in specific cases may be prohibited under other provisions of the CEA and Commission regulations. In addition, the Commission may consider this issue in a future rulemaking.

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

[8] 7 U.S.C. 7b–3(e).

[9] Proposal at 72265–72266.

[10] *Id.* at 72266.

[11] *See* SIFMA AMG Letter, at 2; ICI Letter, at 3; MFA Letter, at 6 (''While MFA speaks only on behalf of our members, we have heard broadly and uniformly from them that the practice of Name Give-Up is the most significant obstacle to their participation on IDB SEFs.''); Citadel Letter 1, at 3–4 (''Name give-up is the most significant remaining such barrier preventing buy-side firms from trading on certain SEFs . . . .'').

[12] *See* AFR Letter, at 3; CTC Letter, at 1–2; FIA PTG Letter, at 2; MFA Letter, at 6.

[13] MFA Letter, at 6.

[14] JPMorgan Letter, at 10.

[15] *See* ABA Letter, at 2; BPI Letter, at 1; FSF Letter, at 7–8; SIFMA Letter, at 4.

[16] ICI Letter, at 5; MFA Letter, at 4.

[17] MFA Letter, at 4.

[18] Citadel Letter 1, at 6.

[19] Citadel Letter 1, at 7.

Commenters in favor of the Proposal also pointed to their experience in other asset classes where post-trade name give-up is not practiced, asserting that such markets demonstrate that the purported negative liquidity impacts raised by some incumbent swap dealers are unwarranted.[20] Commenters opposed to the Proposal, however, asserted that the quality of liquidity in certain fully-anonymous markets has degraded, even as new types of market participants have entered the marketplace.[21]

Commenters also asserted that prohibiting post-trade name give-up would improve price transparency.[22] Citadel noted that pre-trade anonymous execution methods, such as anonymous order books, will continue to function on a pre-trade basis as they do today, providing the same level of price transparency to market participants.[23] Citadel and MFA opined, however, that eliminating post-trade name give-up should be expected to increase pre-trade transparency, as more market participants are able to participate in these trading protocols.[24] MFA stated that post-trade name give-up has limited investor access to affected SEFs, thereby reducing pre-trade transparency regarding available bids and offers, limiting investor choice of trading protocols, and creating information asymmetries between market participants.[25] MFA asserted that eliminating post-trade name give-up would facilitate investors selectively accessing additional liquidity pools and trading protocols, thereby improving price discovery and pre-trade transparency while reducing information asymmetries.[26]

The Commission believes that prohibiting post-trade name give-up is reasonably necessary to facilitate and promote trading on SEFs. The practice of post-trade name give-up has reportedly deterred a significant segment of market participants from making markets on or otherwise participating on affected SEFs. Such market participants have ascribed their lack of participation to several potential harms resulting from post-trade name give-up, a principal concern being the risk of information leakage allowing counterparties to glean a SEF participant's trading positions and strategies.[27] The Commission has heard repeatedly and consistently from market participants eager to trade fully-anonymously on SEFs.[28] The Commission expects that many of these market participants will choose to participate on affected SEFs once the practice is prohibited, leading to increased trading. Furthermore, the Commission believes that prohibiting post-trade name give-up will promote pre-trade price transparency in the swaps market by encouraging a greater number, and a more diverse set, of market participants to anonymously post bids and offers on affected SEFs.

With respect to claims made by some commenters that incumbent swap dealers may pull back from trading on SEFs if post-trade name give-up is prohibited, the Commission does not believe that this prospect justifies maintaining the practice. In the Commission's view, there is not convincing evidence, such as research or data, supporting the proposition that participation and trading on SEFs will decrease as a result of prohibiting post-trade name give-up. Rather, the Commission believes that fully-anonymous trading has facilitated liquidity and diverse participation in markets for instruments such as futures, equities, and U.S. Treasury securities, and academic literature suggests that markets with pre- and post-trade anonymity generally feature greater liquidity than those without.[29] The Commission believes that increased anonymity is reasonably likely to similarly enhance trading on SEFs.[30] The Commission intends to study the state of the swaps market in order to observe any changes to trading on SEFs following the implementation of this final rule.[31]

Moreover, the Commission finds the reasoning behind claims that incumbent swap dealers may reduce their trading if post-trade name give-up is prohibited to be at odds with the statutory requirements discussed in the following two sections: To promote fair competition among market participants and impartial access to the market. The reason proffered for a potential pullback in trading by incumbent swap dealers is that post-trade name give-up is important to ensure that swap dealers can hedge the risk of their client-facing trades.[32] In this regard, some market participants argue that participation of buy-side clients and speculators on pre-trade anonymous SEFs (and without the ability to identify them through post-trade name give-up) will harm the ability of dealers to hedge reliably.[33] These arguments can be understood to imply that greater participation and competition from certain types of market participants (such as buy-side clients and speculators) on affected pre-trade anonymous SEFs will harm overall market quality and welfare. The Commission finds this proposition to be at odds with the statutory requirements to promote fair competition among

[20] *See* Citadel Letter 1, at 7; Citadel Letter 2, at 7, FIA PTG Letter, at 1–2, MFA Letter, at 4.

[21] For example, FSF and JPMorgan assert that dealer-provided liquidity in some markets has increasingly been replaced by high-frequency trading firms that tend to retract liquidity sooner than other types of market participants during periods of high volatility. FSF Letter, at 9; JPMorgan Letter, at 6 and 9. *See also* Citi Letter, at 4 note 7 (''[D]egradations in liquidity have occurred in other markets that have transitioned to fully anonymous trading.''). By contrast, Citadel asserts that it is ''bank dealers'' that have withdrawn from SEFs and U.S. Treasury markets during certain periods of market volatility. Citadel Letter 2, at 12.

[22] Citadel Letter 1, at 4–5; Citadel Letter 2, at 5; MFA Letter, at 4; SIFMA AMG Letter, at 2; Vanguard Letter, at 1.

[23] Citadel Letter 1, at 4–5.

[24] *Id.* at 5; Citadel Letter 2, at 5; MFA Letter, at 4.

[25] MFA Letter, at 4.

[26] *Id.*

[27] *See* CFTC Market Risk Advisory Committee Meeting, *Panel Discussion: Market's Response to the Introduction of SEF's,* 133 *et seq.* (Apr. 2, 2015) (MRAC Meeting Transcript) at 142–144; Proposal at 72264; AIMA Letter, at 1; Citadel Letter 1, at 1, 3 and 10; ICI Letter, at 3; MFA Letter, at 3 and 7; SIFMA AMG Letter, at 1 and 2; Vanguard Letter, at 2.

[28] *See, e.g., supra* notes 12–13 and accompanying text; Proposal at 72264, notes 31–32 and accompanying text; MRAC Meeting Transcript at 140.

[29] *See, e.g.,* S. Freiderich & R. Payne, *Trading Anonymity and Order Anticipation,* 21 Journal of Financial Markets 1–24 (2014) (finding that post-trade anonymity improved market liquidity, particularly for small stocks and stocks with concentrated trading, which may be more analogous to swaps); T.G. Meling, *Anonymous Trading in Equities* (2019 working paper) (also finding that post-trade anonymity improved market liquidity); P.J. Dennis & P. Sandas, *Does Trading Anonymously Enhance Liquidity?* Journal of Financial and Quantitative Analysis 1–25 (2019) (same); A. Hachmeister & D. Schierek, *Dancing in the Dark: Post-Trade Anonymity, Liquidity, and Informed Trading,* 34 Review of Quantitative Finance and Accounting 145–177 (2010) (same); J. Linnainmaa & G. Saar, *Lack of Anonymity and the Inference from Order Flow,* 25 Review of Financial Studies 1,414–1,456 (2012) (same). *See also* Treasury Market Practices Group, *White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities* (Jul. 11, 2019) (stating that the emergence of new types of market participants in the U.S. Treasury securities market has ''likely improved overall liquidity through enhanced order flow and competition'').

[30] *See, e.g.,* T. Lee & C. Wang, *Why Trade Over-the-Counter? When Investors Want Price Discrimination,* at 26–27 (2019 working paper) (predicting that eliminating name give-up in swaps markets would decrease spreads on SEFs and increase total market participant welfare).

[31] In this respect, the Commission will endeavor to conduct a preliminary study on the state of the swaps markets by July 2021, and a further study by July 2023.

[32] *See* ABA Letter, at 2; BPI Letter, at 1; Citi Letter, at 4; FSF Letter, at 3–6; JPMorgan Letter, at 4–5; SIFMA Letter, at 4–5; TP ICAP Letter, at 5. Commenters supporting the Proposal, however, asserted that the proposition that post-trade name give-up is necessary for dealer risk management is spurious. *See,* Better Markets Letter, at 8; Citadel Letter 1, at 2; Vanguard Letter, at 2.

[33] *See* FSF Letter, at 4–6; Citi Letter, at 3; *infra* notes 53–57 and accompanying text.

market participants and impartial access on SEFs. The Commission believes that maintaining post-trade anonymity, where it is reasonable to do so, will better align with the statutory framework discussed below and level the playing field for market participants of all types and sizes to trade and compete on affected SEFs without exposing sensitive swap transaction information.

2. Promoting Fair Competition Among Market Participants (CEA Section 3(b))

CEA Section 3(b) specifies that a purpose of the CEA is to promote fair competition among market participants.[34] In the Proposal, the Commission noted commenters' stated concerns about information leakage and anticompetitive behavior made possible by post-trade name give-up. The Commission reasoned that greater participation on SEFs resulting from a prohibition on post-trade name give-up would advance the goal of promoting competition on SEFs.[35] The Commission stated that the proposed rule may also advance the CEA's goal of fostering fair competition among market participations by reducing opportunities for information leakage associated with post-trade name give-up.[36]

In response to the Proposal, several commenters emphasized the view that post-trade name give-up is an anticompetitive practice and/or permits swap dealers to engage in certain anticompetitive behavior,[37] and some commenters opined that prohibiting the practice may lead to greater competition among dealers and liquidity providers.[38] Conversely, JPMorgan asserted that post-trade name give-up ''*promotes* competition and attracts SEF trading by providing market participants multiple protocols from which to choose depending on their business models and preferences.'' [39] By ''limiting the methods through which SEFs can operate and compete with each other,'' JPMorgan argued, banning post-trade name give-up ''would clearly *reduce* innovation and *reduce* competition 'among . . . markets,' thus in fact contravening Section 3(b)'s mandate.'' [40]

The Commission is not persuaded by comments that prohibiting post-trade name give-up would itself impair competition or innovation. Post-trade name give-up is an ancillary post-trade protocol, and not a method of execution. The prohibition of post-trade name give-up, as proposed and adopted by the Commission, applies to all SEFs and all pre-trade anonymous execution methods. It does not proscribe SEFs from offering any existing execution method, nor does it prevent SEFs from developing new execution methods. Moreover, the Commission is concerned by other commenters' assertions that post-trade name give-up enables anticompetitive behavior. Regardless of the prevalence or magnitude of such behavior, the Commission believes that prohibiting post-trade name give-up will reduce the opportunity for such behavior to occur, and is therefore reasonably necessary to promote fair competition among market participants on pre-trade anonymous SEF markets for cleared swaps. The Commission believes that prohibiting post-trade name give-up will address concerns about information leakage and discriminatory behavior that market participants claim have dissuaded them from accessing pre-trade anonymous liquidity pools to date, thereby removing barriers to greater participation and competition.

3. Providing Market Participants With Impartial Access to the Market (CEA Section 5h(f)(2)(B) and CFTC Regulation 37.202)

CEA section 5h(f)(2)(B) requires a SEF to establish and enforce trading, trade processing, and participation rules that provide market participants with ''impartial access'' to the market.[41] The Commission implemented this statutory requirement by adopting CFTC regulation 37.202,[42] which requires a SEF to provide market participants with impartial access to its market(s), including, among other things, criteria governing such access that are ''impartial, transparent and applied in a fair and non-discriminatory manner.'' [43] In this context, ''impartial'' means fair, unbiased, and unprejudiced.[44] The impartial access requirement allows participants to compete on a level playing field, and additional liquidity providers to participate on SEFs.[45]

In the Proposal, the Commission stated that post-trade name give-up may result in a ''discriminatory effect'' against certain market participants, and that the Commission preliminarily believed post-trade name give-up undermines the policy goals of the impartial access requirement, namely, to: (1) Ensure that market participants can compete on a level playing field; and (2) allow additional liquidity providers to participate on SEFs.[46] The Commission also stated its preliminary assessment that promoting a fully-anonymous trading environment without post-trade name give-up would better fulfill the goals of the impartial access requirement.[47] The Proposal asked for public comments on whether post-trade name give-up undermines the stated goals of impartial access.

Several commenters stated that post-trade name give-up creates an uneven or unfair playing field by conferring benefits to select market participants (large incumbent swap dealers) and permitting such market participants to engage in discriminatory trading practices.[48] AFR stated that post-trade

[34] 7 U.S.C. 5(b).

[35] Proposal at 72266.

[36] *Id.*

[37] *See* AFR Letter, at 2–3; Better Markets Letter, at 11–12 (''[T]he gleaning of trading interest and trade information and the apparent consequences of the practice of Post-Trade Name Give-Up—to permit dealers to exit order books with non-dealer participation and trade with informational advantages—conflict with the CEA's overarching statutory objectives to 'promote . . . fair competition among boards of trade, other markets and market participants' . . . .''); Citadel Letter 1, at 1; Citadel Letter 2, at 5 and 10; HMA Letter, at 2; MFA Letter, at 3; SIFMA AMG Letter, at 1.

[38] *See* CTC Letter, at 1–2 (''[W]e would expect abolishing name give-up to *increase* liquidity provision on SEFs given increased participation from buy-side firms, which should in turn drive enhanced participation from liquidity providers.''); ICI Letter, at 5 (''[P]rohibiting post-trade name give-up could encourage competition among dealers to the extent post-trade name give-up today gives a few dominant dealers in the market leverage over buy-side participants and other dealers.''); MFA Letter, at 4 (''[N]ew liquidity providers may be able to enter the market more easily, which will diversify sources of liquidity and increase competition.'').

[39] JPMorgan Letter, at 10.

[40] *Id.* at 11. *See also* FSF Letter, at 10 (''Contrary to what is argued in the [Proposal] and by commenters, banning name give-up would itself impair competition (certainly, innovation and competition among markets) . . . .'').

[41] 7 U.S.C. 7b–3(f)(2)(B).

[42] 17 CFR 37.202.

[43] 17 CFR 37.202(a).

[44] *See* Core Principles and Other Requirements for SEFs, 78 FR 33476, 33508 (June 4, 2013).

[45] *Id.*

[46] Proposal at 72267.

[47] *Id.*

[48] *See* AFR Letter, at 3 (''Post-trade name give-up exposes liquidity providers to several risks, including the risk of retaliation from large competitors and the risk of revealing information relevant to trading strategies to competitors. Smaller liquidity providers and new entrants would tend to be more vulnerable to these dangers.''); Better Markets Letter, at 9; Citadel Letter 1, at 3–4 and 6 (''[S]wap dealers are able to use name give-up as a post-trade check to ensure that they are only transacting with other swap dealer counterparties on [interdealer broker] SEFs, thereby maintaining dealer-only liquidity pools in direct contradiction of statutory impartial access requirements.''); Citadel Letter 2, at 10 (''[W]e note the experience of Citadel Securities entering the swaps market as a new liquidity provider, where we witnessed how certain other swap dealers can use name give-up for purposes that are inconsistent with the Commission's impartial access requirements. Immediately following our entry as a new liquidity provider, this included certain incumbent swap dealers asking [interdealer broker] SEFs to cancel executed trades upon learning through name give-

name give-up thereby ''undermines impartial access and reduces the number of competitive liquidity providers on SEFs.'' [49] Commenters also asserted that prohibiting post-trade name give-up would lead to additional, more diversified sources of liquidity on SEFs.[50] JPMorgan, on the other hand, opined that although eliminating post-trade name give-up ''might draw certain market participants to trade on . . . SEFs that are fully anonymous, it may drive others (*e.g.,* dealers) away. Therefore, it is not clear that prohibiting [post-trade name give-up] would further the goal of impartial access . . . .'' [51] JPMorgan also argued that the concept of ''discriminatory effect'' is ''amorphous'' and could be used to justify other market interventions simply because certain market participants prefer it.[52]

For commenters opposed to a prohibition on post-trade name give-up, the crux of their opposition is the notion that prohibiting the practice may impose ''adverse selection'' risk on incumbent swap dealers.[53] FSF explained that ''dealers prefer to match with the natural other side of a trade (*e.g.,* another dealer generally seeking to maintain a risk-neutral position)'' as opposed to other market participants, such as speculators, who may impose adverse selection costs.[54] According to FSF, swap dealers use post-trade name give-up to ascertain ''what types of market participants are generally trading'' on pre-trade anonymous SEFs, and ''maximize the chances of trading with the natural other side and thus manage adverse selection costs.'' [55] Citi similarly commented that ''[i]f new participants will be enticed to join [dealer-to-dealer] SEFs, some presumably may be participants that quote speculatively and intermittently, thereby diluting the reliable and consistent nature of quoting and trading that is the hallmark of [dealer-to-dealer] SEFs.'' [56] In a related argument, FSF asserted that post-trade name give-up makes request-for-quote (RFQ) pricing ''more tailored and efficient'' by allowing dealers to ensure their RFQ clients are not trading on dealer-to-dealer order books, or if they are, quoting them wider spreads via RFQ to accommodate a greater anticipated risk of hedging the balance sheet capacity allocated to such clients.[57]

After considering all comments, the Commission believes that post-trade name give-up undermines the policy goals of the impartial access requirement, and that prohibiting the practice is reasonably necessary to effectuate the purposes of section 5h(f)(2)(B) of the Act. The Commission finds that the practice of post-trade name give-up effectively discriminates against certain market participants and has deterred participants from joining or trading in a meaningful way on SEFs that employ the practice. The use of post-trade name give-up to discriminate between certain types of market participants in order to maximize trading with one type of market participant and avoid trading with another—or to dissuade certain types of market participants from trading on a SEF—undermines the policy goals of the impartial access requirement to ensure that market participants can compete on a level playing field and to allow additional liquidity providers to participate on SEFs. Further, in implementing § 37.202(a), the Commission rejected the notion that a SEF could limit access to its trading systems to certain types of market participants such as swap dealers.[58] However, the practice of post-trade name give-up purportedly to avoid adverse selection risk, in the Commission's view, leads to a similar result, and therefore conflicts with the purposes of the impartial access requirement imposed by CEA section 5h(f)(2)(B). Finally, the comment that a potential ''discriminatory effect'' could be used to justify market intervention simply because certain market participants prefer it misses the point. The Commission's view here is based not upon the mere preference of certain market participants, but rather upon the entirety of facts and circumstances presented, the discriminatory manner in which post-trade name give-up is applied, and the realized effect of post-trade name give-up as a disincentive to access and participation by certain types of market participants and not others.

4. Information Privacy and Prohibition Against Post-Trade Name Give-up at an SDR (CEA Section 21(c)(6) and CFTC Regulation 49.17(f)(2))

CEA section 21(c)(6) requires an SDR to maintain the privacy of any and all swap transaction information that it receives from a swap dealer, counterparty, or any other registered entity.[59] In implementing this statutory provision, the Commission promulgated regulation 49.17(f) to address the scope of access a market participant may have to swap data maintained by an SDR. For swaps executed anonymously on a SEF and cleared in accordance with the Commission's STP requirements, § 49.17(f)(2) prohibits an SDR from providing a counterparty to a swap with access to the identity of the other counterparty or its clearing member.[60] In adopting this provision, the Commission explained that this swap transaction information is subject to the statutory privacy protections because, in the Commission's view, swap counterparties would not otherwise know one another's identity if the swap were submitted to clearing via STP.[61] In the Proposal, the Commission stated that post-trade name give-up undercuts the intent of § 49.17(f)(2) and the congressional objectives of CEA section 21(c)(6). Therefore, the Commission reasoned, prohibiting post-trade name give-up would help to advance the objectives underlying the statutory

up that their counterparty was Citadel Securities.''); SIFMA AMG Letter, at 2.

[49] AFR Letter, at 3.

[50] CTC Letter, at 1–2; FIA PTG Letter, at 2; AFR Letter, at 3; MFA Letter, at 4; Better Markets Letter, at 5.

[51] JPMorgan Letter, at 12.

[52] *Id. See also* FSF Letter, at 11. *But cf.* Better Markets Letter, at 10 (''[I]mpartial access would essentially become a fiction if certain classes of SEF participants could be targeted with trading practices, like Post-Trade Name Give-Up, that not only impose, but are meant to impose, disparate economic costs and trading limitations on competitors . . . .'').

[53] *See* ABA Letter, at 2; BPI Letter, at 1; FSF Letter, at 4–5; SIFMA Letter, at 3. FSF explained adverse selection in this context as follows. ''[I]nstead of facing a speculator on the other side of a trade, who is more likely to trade in the same direction on other venues or trade in one direction in a small size on one venue in order to push the price in a certain direction so that it can trade in the opposite direction on a different venue at a better price, dealers prefer to match with the natural other side of a trade (*e.g.,* another dealer generally seeking to maintain a risk-neutral position). Such ''naturals'' are more likely to be hedging all their residual accumulated risk, rather than trading in a manner that would move the price in an unfavorable direction.'' FSF Letter, at 5.

[54] FSF Letter, at 4–5.

[55] *Id.*

[56] Citi Letter, at 3.

[57] *See* FSF Letter, at 5 (''Name give-up allows a dealer, over time (not just at the point of execution), to more accurately assess its risk of providing balance sheet capacity to a particular client and determine how it should quote to the client in order to achieve the same desired return on capital for trading with that client as with another, *e.g.,* by quoting a tighter price to [an RFQ requester that does not trade in the dealer-to-dealer order book SEFs] than [an RFQ requester the dealer has seen trade frequently in order book SEFs].''). FSF explained that the price that a dealer gives a client over RFQ depends on the costs of hedging the client-facing trade, and the dealer's available liquidity for hedging depends in turn on whether the client will also be accessing that liquidity. *Id.*

[58] *See* Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33507–33508 (June 4, 2013).

[59] 7 U.S.C. 24a(c)(6).

[60] 17 CFR 49.17(f)(2).

[61] Swap Data Repositories—Access to SDR Data by Market Participants, 79 FR 16673–16674 (Mar. 26, 2014).

privacy protections in CEA section 21(c)(6) and the Commission's regulations thereunder.[62]

Several commenters agreed with the Commission's assessment in the Proposal that post-trade name give-up undercuts the intent of CEA section 21(c)(6) and § 49.17(f)(2).[63] FSF, on the other hand, asserted that name give-up is not comparable to an SDR disclosing counterparty information since, in FSF's view, market participants choose to have their names disclosed by trading on a SEF that practices post-trade name give-up.[64] FSF also asserted that ''[i]f Congress wanted to extend the privacy requirement to SEFs, it certainly would have done so.'' [65]

After considering commenters' arguments, the Commission continues to believe that post-trade name give-up undermines the objectives underlying CEA section 21(c)(6) and § 49.17(f)(2) thereunder. In response to commenters who noted CEA section 21(c)(6) addresses SDRs and not SEFs, the Commission does not believe this reflects a Congressional intent to permit post-trade name give-up on SEFs. As the Commission noted in the Proposal, the Congressional intent to protect the privacy of trading information, including trader identities, is evident in other statutory provisions.[66] While some market participants willingly participate on SEF platforms practicing post-trade name give-up, others are reportedly deterred from doing so due to concerns over the privacy of their swap transaction information.[67] The Commission believes that prohibiting post-trade name give-up is consistent with Congressional intent and will further the objectives underlying CEA section 21(c)(6) and statutory provisions similarly aimed at protecting private information of market participants.

B. Application of the Rule

1. Scope of Swaps Covered

In the Proposal, the Commission stated its preliminary belief that, with respect to operational, credit and settlement, and legal issues in particular, post-trade name give-up is generally unnecessary where a swap is executed on a SEF and submitted to a DCO for clearing.[68] Accordingly, the Commission proposed in § 37.9(d) to prohibit disclosing the identity of a counterparty to a swap executed anonymously and ''intended to be cleared.'' The Commission specifically requested public comments on whether any operational, credit and settlement, legal, or similar issues exist that would still require post-trade name give-up for an intended-to-be-cleared swap. The Commission also requested public comments on whether it should narrow the scope of the proposed prohibition on post-trade name give-up to swaps required to be cleared under section 2(h)(1) of the Act or swaps subject to the trade execution requirement under section 2(h)(8) of the Act.

The Commission received a number of comments opposing limiting the scope of the prohibition.[69] MFA opposed narrowing the scope of the prohibition to swaps required to be cleared or subject to the trade execution requirements, asserting that doing so ''would mute the overall effectiveness of the Proposed Rule . . . .'' [70] Similarly, Citadel asserted that the rationale for prohibiting post-trade name give-up applies equally to all swaps intended to be cleared, not just swaps subject to the clearing requirement or trade execution requirement and, therefore, ''there is no rational basis for drawing such a distinction.'' [71] Citadel and FIA PTG, however, requested that the Commission clarify that ''intended to be cleared'' be interpreted to mean swaps that are intended to be submitted for clearing contemporaneously with execution, and not include swaps that begin as uncleared transactions and are later submitted to clearing.[72] TP ICAP, on the other hand, asserted that any prohibition on post-trade name give-up should be limited to, at most, swaps subject to the clearing requirement.[73] TP ICAP reasoned that a SEF may not know whether parties to a voluntarily-cleared swap will in fact submit the swap to a DCO, as the parties may do so themselves post-execution.[74] TP ICAP stated that ''it would be difficult, if not impossible, to impose a restriction on [post-trade name give-up] post-execution when it is not known whether the transaction will be submitted for clearing.'' [75]

The Commission declines to narrow the prohibition as requested by TP ICAP and is adopting § 37.9(d), as proposed, to include swaps that are intended to be cleared. The Commission continues to believe that there is no need for post-trade name give-up if a swap is executed on a SEF and submitted to a DCO for clearing pursuant to STP requirements. Narrowing the prohibition to apply only to swaps required be cleared under section 2(h)(1) of the Act would unduly narrow its scope and hamper the statutory and regulatory objectives underlying the prohibition. Whether or not a swap is intended to be cleared is a material term that affects trade pricing and trade processing workflows, and it is something a SEF should be able to determine at the time of execution.[76] However, to the extent a SEF's current systems do not indicate whether a swap is intended to be cleared, the Commission notes that the SEF must make necessary adjustments to its systems and processes to ensure that it can determine whether a swap is intended to be cleared before permitting post-trade name give-up.[77] The Commission recognizes that some SEFs may need time to make such adjustments, and the Commission is

[62] Proposal at 72266.

[63] *See* Better Markets Letter, at 11; Citadel Letter 1, at 4; FIA PTG Letter, at 2–3; ICI Letter, at 4.

[64] *See* FSF Letter, at 10–11.

[65] FSF Letter, at 11. *See also* SIFMA Letter, at 5; TP ICAP Letter, at 6.

[66] Proposal at 72266, note 62. CEA Section 8(a), for example, prohibits the Commission from publication of data and information that would disclose the business transactions or market positions of any person and trade secrets or names of customers. 7 U.S.C. 12(a).

[67] *See, e.g.,* Proposal at 72263–72264 (discussing market participants' concerns over ''information leakage'' that could expose a counterparty's trading positions, strategies and/or objectives).

[68] Proposal at 72267. The Commission also noted that STP requirements for transactions subject to clearing obviate the need for counterparty name disclosure. *Id.*

[69] *See* AFR Letter, at 3; Citadel Letter 1, at 4; FIA PTG Letter, at 2; ICI Letter, at 5; MFA Letter, at 5–6.

[70] MFA Letter, at 5.

[71] Citadel Letter 1, at 4 (asserting that name give-up has no justification where: (1) the Commission's STP requirements ensure that a swap is quickly submitted to, and accepted or rejected by, a DCO (and is considered *void ab initio* if rejected); and (2) the two trading counterparties do not have credit, operational, or legal exposure to each other at any stage).

[72] *See* FIA PTG Letter, at 2; Citadel Letter 1, at 4; Citadel Letter 2, at 16. Citadel noted that ''SEFs may offer pre-trade anonymous trading protocols for swaps that begin as uncleared and then are 'backloaded' into clearing by the trading counterparties at a later time.'' *Id.*

[73] TP ICAP Letter, at 2.

[74] *Id.*

[75] *Id.* TP ICAP also asserted that the Proposal ''does not accommodate the necessity of Name Give-Up in transactions that are executed and cleared across time zones.'' *Id.* TP ICAP stated that in such circumstances, transactions executed in one time zone may remain bilateral transactions until the relevant clearing house opens in another time zone, and post-trade name give-up would be necessary for the parties to manage counterparty credit risk until the trade can be submitted to the clearing house.

[76] Furthermore, the Commission notes that a SEF's knowledge of whether or not a swap is intended to be cleared is relevant to real-time reporting and STP requirements. *See* 17 CFR 43.3(b) and Appendix A to Part 43; 17 CFR 39.12(b)(7).

[77] As discussed in the following section below, the prohibition on post-trade name give-up applies equally to swaps that are pre-arranged or pre-negotiated by a broker on an anonymous basis. Therefore, a SEF must also ensure that its rules, systems, and processes require and enable brokers to engage in such pre-arrangement or pre-negotiation without compromising counterparty anonymity, and to reliably determine whether a swap is intended to be cleared prior to engaging in name give-up.

therefore providing a later compliance date for voluntarily-cleared swaps, as further described below. Finally, in response to the comments from Citadel and FIA PTG, the Commission clarifies that ''intended to be cleared'' should be interpreted to mean swaps that are intended to be submitted for clearing contemporaneously with execution. Accordingly, if a swap begins as an uncleared transaction and then is voluntarily submitted for clearing by the counterparties at a later time, the swap would not be considered ''intended to be cleared,'' and therefore would not be subject to the prohibition on post-trade name give-up.[78]

2. Trades Pre-arranged or Pre-negotiated by a Broker

A number of commenters recommended the Commission clarify that the prohibition on post-trade name give-up applies to a swap that is pre-arranged or pre-negotiated by a broker on an anonymous basis and thereafter submitted for execution on a SEF.[79] Commenters stated that doing so would help ensure that market participants cannot evade the prohibition on post-trade name give-up.[80] For example, Citadel stated that voice brokers, operating either within a SEF or through an affiliated introducing broker, may seek to evade a prohibition on post-trade name give-up by pre-negotiating or pre-arranging trades anonymously and then disclosing counterparty identities prior to formally executing the transaction on the SEF.[81]

To address this concern, the Commission is revising proposed § 37.9(d)(3) to state that the phrase ''executed anonymously'' for purposes of §§ 37.9(d)(1) and (2) includes a swap that is pre-arranged or pre-negotiated anonymously, including by a participant of the SEF. In addition, the Commission is deleting the original text of proposed § 37.9(d)(3), which the Commission believes is superfluous.[82]

3. Package Transactions

In the Proposal, the Commission recognized that a limited exception to the post-trade name give-up prohibition may be necessary for cleared swaps that are components of package transactions that include uncleared swap components.[83] Uncleared swap components create bilateral credit, operational, and/or legal exposures that the counterparties must manage on an ongoing basis. Therefore, the Commission requested public comments on the necessity and scope of an exception to the post-trade name give-up prohibition for package transactions. The Commission also requested comments on whether an exception should be provided for package transactions involving any non-swap instrument, including U.S. Treasury securities.

Commenters agreed that a prohibition on post-trade name give-up should not apply to components of a package transaction that are uncleared swaps or non-swap instruments. Commenters differed on whether the Commission should provide an explicit exception in the regulation. FIA PTG, MFA and Citadel argued that while uncleared and non-swap components of package transactions should not be subject to a prohibition on post-trade name give-up, an explicit exclusion in the regulation is not necessary.[84] These commenters reasoned that, by its very terms, the proposed prohibition applies to swaps intended to be cleared; thus, where a package transaction contains a cleared swap component and another uncleared swap or a non-swap component, the prohibition would not apply to the uncleared swap or non-swap component of the transaction.[85] In contrast, JPMorgan and FSF stated that the Commission should provide an exception to the post-trade name give-up prohibition for package transactions that include an uncleared swap or security component.[86]

The Commission agrees with commenters that the post-trade name give-up prohibition should not apply to an uncleared swap or non-swap component of a package transaction. Uncleared swap and non-swap components of package transactions may create bilateral credit, operational, and/or legal exposures that require the counterparties to know each other's identities. For uncleared components of a package transaction, post-trade name give-up enables market participants to perform credit checks on counterparties prior to finalizing the transaction. The practice also allows counterparties to manage credit exposure and payment obligations arising from the bilateral nature of such uncleared transactions. In the case of U.S. Treasury securities, post-trade name give-up may still be necessary to accommodate trading mechanisms and infrastructures currently used for U.S. Treasury swap spreads that do not allow for anonymous clearing and settlement of the Treasury component of such transactions.[87] Therefore, the Commission believes that a limited exception to the prohibition is appropriate at this time for package transactions that include a component that is an uncleared swap or a non-swap.[88] The Commission will continue

[78] This includes swaps that are ''backloaded'' into clearing as described by Citadel. *See supra* note 72. The Commission notes that its STP regulations apply to all swaps cleared through a DCO, including voluntarily-cleared swaps. Those requirements are designed to (1) ensure that swaps are processed and accepted or rejected promptly from clearing, and (2) require swap dealers, SEFs and DCOs to coordinate with one another to ensure they have the capacity to accept or reject trades as quickly as technologically practicable if fully automated systems were used. 17 CFR 23.610, 37.702(b), 39.12(b)(7).

[79] *See* AIMA Letter, at 2; Citadel Letter 1, at 11; Citadel Letter 2, at 17–18; FIA PTG Letter, at 2; MFA Letter, at 7. In a related comment, TP ICAP noted that the Commission should consider additional exceptions or guidance ''where a swap is arranged off-SEF (*e.g.,* by an Introducing Broker) [and] submitted for execution and clearing through a SEF to a [DCO]'' where a prohibition on name give-up ''would . . . be incongruous because the counterparties will already know one another's identity at the point of execution.'' TP ICAP Letter, at 7.

[80] Citadel Letter 1, at 11; Citadel Letter 2, at 17–18; CTC Letter, at 2; FIA PTG Letter, at 2; MFA Letter, at 7. The Commission notes that the ban on post-trade name give-up is subject to the Commission's broad anti-evasion requirements.

[81] Citadel Letter 1, at 2; Citadel Letter 2, at 17–18.

[82] As proposed, § 37.9(d)(3) read as follows: The provisions in paragraphs (d)(1) and (d)(2) of this section shall not apply with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap. The Commission notes that the removal of this language from the final regulation is not intended to be a substantive revision or change the intended meaning or effect of the final rule. Notwithstanding this revision, the final rule does not apply to execution methods that are not pre-trade anonymous, such as name-disclosed RFQ.

[83] Proposal at 72267.

[84] *See* FIA PTG Letter, at 2; MFA Letter, at 5–6; Citadel Letter, at 9; Citadel Letter 2, at 17.

[85] Citadel and FIA PTG also stated that each component of a package already faces distinct post-trade operational workflows, so this treatment would be consistent with current market practice. FIA PTG Letter, at 2; Citadel Letter 1, at 9; Citadel Letter 2, at 17.

[86] *See* FSF Letter, at 6 and 15; JPMorgan Letter, at 6 and 19. Similarly, SIFMA stated that any prohibition on post-trade name give-up should exempt package transactions that involve a non-swap component. Without such an exemption, SIFMA argued, SEFs will be required to change the operational flow of both the swap component and the non-swap/security component of the package transaction. SIFMA Letter, at 6. SIFMA raised concern that ''the changes necessary for this infrastructure have not been considered in the cost/benefit analysis, and have not been analyzed enough to consider unintended consequences.'' *Id.*

[87] To the extent that counterparties may be facilitating package transactions that involve a ''security,'' as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934, or any component agreement, contract, or transaction over which the Commission does not have exclusive jurisdiction, the Commission does not opine on whether such activity complies with other applicable laws and regulations.

[88] TP ICAP commented that the Commission should also consider an exception or additional guidance in cases where ''a swap is a component of a package transaction involving another component that is not cleared at the same DCO.'' TP ICAP Letter, at 7. The Commission believes that

Continued

to monitor the operational development of these markets, and encourages SEFs and market participants to address existing operational limitations so that any need for post-trade name give-up may be further diminished.

Accordingly, the Commission is revising proposed § 37.9(d) by adding § 37.9(d)(4), which provides a limited exception to the post-trade name give-up prohibition for a swap that is intended to be cleared, when it is a component of a package transaction that includes a component transaction that is not an intended-to-be-cleared swap. The post-trade name give-up prohibition, as adopted in this release, prohibits SEFs from directly or *indirectly* disclosing the identity of a counterparty to a swap that is anonymously executed, pre-arranged or pre-negotiated on or pursuant to the rules of a SEF and intended to be cleared. Because the components of a package transaction are priced or quoted together as one economic transaction, the disclosure of the identity of a counterparty to any component of a package transaction effectively discloses the counterparty identity for all components of that package transaction. As such, if a SEF were to disclose the identity of a counterparty to the uncleared swap or non-swap component of a package transaction, the SEF would also be *indirectly* disclosing the identity of the counterparty to the intended-to-be-cleared swap component of the package transaction; and such indirect disclosure is otherwise prohibited under the regulation. Therefore, the Commission believes that a limited exception to the post-trade name give-up prohibition for package transactions with uncleared swap and non-swap components is necessary to provide clarity and regulatory certainty to SEFs and market participants.

The exception will apply, for example, to U.S. Treasury swap spreads involving an intended-to-be-cleared swap and a U.S. Treasury security. However, the Commission emphasizes that the exception is limited in scope. Many package transactions are traded anonymously and involve only intended-to-be-cleared swaps, and the prohibition on post-trade name give-up will apply to these transactions in full.[89] The Commission notes that this exception is intended to accommodate trading and settlement workflows for certain package transactions as they exist today. It is not an invitation to structure package transactions to allow post-trade name give-up or to evade the prohibition on post-trade name give-up that the Commission is adopting in this final rule. In that regard, the final rule adopted herein is subject to the Commission's broad anti-evasion requirements.

The Commission emphasizes that this exception does not limit, prohibit, or otherwise restrain SEFs or market participants from developing and utilizing trading functionalities, operational workflows, or infrastructures for package trades that are fully anonymous, and do not utilize post-trade name give-up. The Commission encourages SEFs and market participants to continue to work to eliminate the technological and/or operational need for post-trade name give-up. The Commission will continue to monitor whether the exception in § 37.9(d)(4) can be refined as trading functionalities, operational workflows, and/or infrastructure continue to develop in the future.

4. Workups

In the Proposal, the Commission requested public comments on how, if at all, a prohibition on post-trade name give-up would affect trading protocols such as auctions, portfolio compression, and/or workup sessions. JPMorgan and FSF asserted that post-trade name give-up is an integral part of workup protocols, and the Proposal will impair workup protocols and adversely affect dealers' ability to hedge.[90] These commenters asserted that a dealer's willingness to offer greater size through a workup may depend on (1) who its counterparty is, in particular whether the counterparty is likely to be able to execute on the full size the dealer is willing to offer, [91] and (2), as FSF stated, whether the counterparty might impose adverse selection costs on the dealer upon knowing its trading interests.[92] FSF suggested that if the Commission proceeds with a prohibition on post-trade name give-up, it should exclude from the prohibition any SEF that obtains a material portion of its trading volume, over a specified period, through workups.[93]

In contrast, Citadel and MFA asserted that post-trade name give-up is not necessary for workup sessions. Citadel asserted that if a trading protocol is pre-trade anonymous, there is no need to disclose the trading counterparties in order to engage in a work-up session and, therefore, ''work-up sessions on [interdealer broker] SEFs will function just as they do today in order to facilitate trading in size.'' [94] Citadel also stated that claims to the contrary ''are easily disproven by looking at the U.S. Treasury market, where work-ups are commonly employed on interdealer platforms even though name give-up is not used.'' [95] MFA further argued that prohibiting post-trade name give-up would benefit trading protocols such as auctions, portfolio compression, and/or workup sessions by increasing buy-side access and participation.[96]

The Commission agrees that post-trade name give-up is not necessary for workup sessions. The reasons given by commenters for why they view post-trade name give-up as an important aspect of workup sessions are essentially the same reasons espoused for the purported benefits of post-trade name give-up generally, *i.e.,* ensuring reliable hedging and avoiding adverse selection for incumbent swap dealers.[97] The Commission does not find that workup sessions present a particular need for post-trade name give-up that is distinct from pre-trade anonymous order books. Accordingly, the Commission does not believe it is necessary or appropriate to include an exception for workups.

5. Error Trades

Commenters also addressed the potential impact of a prohibition on post-trade name give-up on error trade corrections. TP ICAP asserted that a prohibition would prevent an efficient means for correcting trade errors, specifically, in cases ''[w]here a party to a swap identifies an error that requires coordination with its counterparty.'' [98] TP ICAP therefore identified error trade correction among issues ''that require the Commission to consider exceptions and additional guidance.'' [99] Similarly, FSF stated that post-trade name give-up

such an exception or guidance is not necessary at this time, and further submits that an explanation as to what the issue or underlying problem could be in such cases has not been provided.

[89] For example, ''curve'' and ''butterfly'' trades involving only intended-to-be-cleared swaps.

[90] *See* FSF Letter, at 2; JPMorgan Letter, at 7.

[91] FSF Letter, at 4; JPMorgan Letter, at 7.

[92] FSF Letter, at 4.

[93] FSF Letter, at 15.

[94] Citadel Letter 1, at 6. Citadel added that, similarly, a pre-trade anonymous auction or compression exercise should not require post-trade name give-up for intended-to-be-cleared swaps. *Id.*

[95] Citadel Letter 2, at 11. Citadel further stated that ''there is nothing unique about transactions executed via work-up compared to other anonymously-executed cleared swaps that would require the disclosure of counterparty identities post-trade. In the fully anonymous U.S. Treasury market, work-ups account for a significant percentage of overall trading activity.'' *Id.* (citing to M.J. Fleming, E. Schaumburg & R. Yang, *The Evolution of Workups in the U.S. Treasury Securities Market,* Liberty Street Economics Blog (Aug. 20, 2015)).

[96] MFA Letter, at 6.

[97] *See supra* notes 32, 33, 53, 54, 55 and accompanying text.

[98] TP ICAP Letter, at 7.

[99] *Id.*

''will remain necessary for counterparties to correct operational or clerical errors resulting in a trade being rejected.'' [100] Citadel disagreed with these commenters, stating that ''[i]n the event of an operational or clerical error, the SEF can facilitate the correction of the error without disclosing a counterparty's identity . . . .'' [101]

The Commission does not believe that post-trade name give-up is necessary or appropriate to resolve error trades for pre-trade anonymous and intended-to-be-cleared swaps. A SEF can intermediate communications if necessary, and otherwise facilitate error trade corrections, without disclosing counterparty identities.[102] Accordingly, the Commission declines to adopt an exception to the prohibition on post-trade name give-up for error trade corrections. Therefore, any SEF offering trading in swaps subject to the prohibition must ensure its rules and procedures for error trades allow for error trade remediation without disclosure of the identities of counterparties to one another.

C. Compliance Dates

The Commission recognizes the final rule adopted herein may require SEFs to modify, in varying degrees, their rules and operations with respect to trading and trade processing systems, error trades, and compliance programs.[103] The Commission also recognizes that the modifications required—and the time necessary to implement them—may vary for different swap products. The Commission anticipates that compliance with the final rule will be simpler to implement for required transactions due to the fact that the methods of execution for such transactions are limited.[104] Permitted transactions may require more time to establish compliance, given that a SEF may offer any method of execution for such transactions.[105] Furthermore, for swaps that are not subject to mandatory clearing, a SEF may need to make additional adjustments to its systems and processes to ensure that it can determine whether a swap is intended to be cleared, and therefore subject to the prohibition on post-trade name give-up.

Accordingly, the Commission is adopting a phased compliance schedule. Specifically, for swaps subject to the trade execution requirement under CEA section 2(h)(8), SEFs must commence compliance with the requirements of § 37.9(d) no later than November 1, 2020. For swaps not subject to the trade execution requirement under CEA section 2(h)(8), SEFs must commence compliance with the requirements of § 37.9(d) no later than July 5, 2021.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [106] requires Federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide an analysis regarding the economic impact on those entities. The final rule adopted by the Commission will directly affect SEFs. The Commission has previously determined that SEFs are not ''small entities'' for the purpose of the RFA.[107] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the rule adopted herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [108] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Commission has previously received a control number from OMB that includes the collection of information associated with part 37 of the Commission's regulations. The title for this collection of information is ''Core Principles and Other Requirements for Swap Execution Facilities, OMB control number 3038–0074.'' [109] Collection 3038–0074 is currently in force with its control number having been provided by OMB. However, the rule adopted herein does not impose any new recordkeeping or information collection requirements, and therefore contains no requirements subject to the PRA.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA.[110] Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

The Commission is adopting amendments to part 37 of the Commission's regulations to prohibit post-trade name give-up for swaps anonymously executed, pre-arranged, or pre-negotiated on or pursuant to the rules of a SEF and intended to be cleared. Section 37.9(d) of the Commission's regulations adopted herein prohibits a SEF from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to any such swap. The regulation also requires SEFs to establish and enforce rules that prohibit any person from effectuating such a disclosure.

The baseline for this consideration of costs and benefits with respect to the rule adopted herein is the status quo, which includes the existing practice of post-trade name give-up for cleared swaps on some SEFs, and the current regulatory requirements that do not explicitly prohibit post-trade name give-up for cleared swaps anonymously executed, pre-arranged, or pre-negotiated on or pursuant to the rules of a SEF. The prohibition does not apply to uncleared swaps or SEF trading systems and platforms that are not pre-trade anonymous; and the final rule includes an exception for package transactions that include components that are not intended-to-be-cleared

[100] FSF Letter, at 15.

[101] Citadel Letter 1, at 10. *See also* Citadel Letter 2, at 17.

[102] The Commission's view on this issue is consistent with its stated view in the Proposal. See Proposal at 72267, note 78.

[103] This includes establishing rules to prohibit post-trade name give-up, as required under § 37.9(d)(2).

[104] 17 CFR 37.9(a) defines ''required transaction'' as a transaction involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act, and provides that required transactions shall be executed on a SEF through an order book or RFQ to no less than three market participants.

[105] 17 CFR 37.9(c) (defining ''permitted transaction'' as any transaction not involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act).

[106] 5 U.S.C. 601 *et seq.*

[107] *See* Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548 (June 4, 2013).

[108] 44 U.S.C. 3501 *et seq.*

[109] *See* OMB Control No. 3038–0074, *available at https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0074* (last retrieved June 23, 2020).

[110] 7 U.S.C. 19(a).

swaps. Much of the swaps trading on SEFs today occurs on disclosed trading systems and platforms that display the identities of potential counterparties to one another before execution occurs. Such is the case, for example, with many RFQ systems offered by SEFs.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally, with many transactions involving U.S. firms taking place across international boundaries, with some Commission registrants being organized outside of the United States, with leading industry members typically conducting operations both within and outside the United States, and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the final rules on all swaps activity subject to the proposed and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[111]

The Commission has endeavored to assess the expected costs and benefits of the final rulemaking in quantitative terms, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the adopted rule in qualitative terms. The lack of data and information to estimate those costs is attributable in part to the nature of the final rule and uncertainty about the potential responses of market participants to the implementation of the final rule. The Commission recognizes that potential indirect costs and benefits of the prohibition on post-trade name give-up adopted herein—*i.e.,* those relating to effects on trading behavior, liquidity, and competition—may be impossible to accurately predict or quantify prior to implementation of the rule.

The final rule differs from the proposed rule in several ways. Section 37.9(d)(3) of the final rule states that for purposes of the rule, the term ''executed anonymously'' shall include a swap that is pre-arranged or pre-negotiated anonymously, including by a participant of the SEF. The proposed rule does not include this provision, which is intended to clarify that the prohibition on name disclosure also applies in cases where a broker pre-negotiates or pre-arranges a trade anonymously. The final rule also includes an exception for package transactions that include a component transaction that is not an intended-to-be-cleared swap, and a staggered compliance schedule depending on whether a swap is subject to the trade execution requirement.

1. Costs

The Commission recognizes that the final rule adopted herein may require SEFs to modify their rules and operations in varying degrees, including, potentially, with respect to trading and trade processing systems, error trades, and compliance programs; and that these modifications are likely to impose costs. For example, § 37.9(d)(2) requires SEFs to establish and enforce rules to prohibit any person from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. Complying with § 37.9(d)(2) will require a SEF to file such rules with the Commission in accordance with part 40 of the Commission's regulations. The Commission estimates that filing such rules may take up to 50 hours, which is unlikely to be a major cost burden on SEFs. The Commission also recognizes that the modifications required—and the time necessary to implement them—may vary for different swap products.

The Commission believes that these costs will be relatively small as compared to a SEF's overall operating costs. In the Proposal, the Commission stated a preliminary assessment that the direct costs in implementing and complying with the proposed rule would not be material, and that the costs of adjusting affected SEF protocols in order to comply would be negligible.[112] The Commission requested that SEFs provide estimates of any direct costs they would incur.[113] The Commission received no such comments. The Commission anticipates that compliance with the final rule will be simpler and less costly to implement for swaps that are subject to the clearing requirement. The Commission recognizes that a SEF may incur additional costs with respect to swaps that are not subject to mandatory clearing, insofar as its systems and processes must be adjusted to ensure that it is determined whether a swap is intended to be cleared prior to permitting post-trade name give-up to occur. The Commission is adopting a phased compliance schedule based on whether a swap is subject to the trade execution requirement. The extended compliance period for swaps not subject to the trade execution requirement will delay the benefits associated with the rule for certain swaps, but should also mitigate the costs to SEFs associated with compliance with the rule.

The Commission anticipates the direct cost of complying with § 37.9(d) for market participants to be at or near zero and has received no comments to the contrary. With respect to potential indirect costs of the proposed rule, commenters opposing the Proposal argued that it will harm liquidity by causing incumbent swap dealers to exit the market or reduce their trading and the liquidity they provide.[114] Several proponents of the Proposal disputed these assertions. ICI and MFA characterized this outcome as ''unlikely.''[115] MFA stated that competitive market forces would ensure that ''in the unlikely event an individual dealer reduced its offering, other dealers would quickly step into its place.''[116] Asserting its experience as a ''top liquidity provider'' in SEF markets, Citadel stated that it does not expect a prohibition on post-trade name give-up to affect its liquidity provision on RFQ platforms or its use of pre-trade anonymous trading protocols.[117] Citadel further asserted that ''other swap dealers share our view, as UBS has supported the prohibition and SIFMA indicated that the views among swap dealers 'are not uniform.' ''[118] Commenters also pointed to their experience in other asset classes where post-trade name give-up is not practiced, asserting that such markets demonstrate that the purported negative liquidity impacts raised by incumbent swap dealers are unwarranted.[119]

The Commission believes that incumbent swap dealers will continue to provide liquidity on the affected SEFs as long as it is in their business interest to do so and notes that the apparent desire of other entities to provide

[111] 7 U.S.C. 2(i). Section 2(i)(1) applies the swaps provisions of both the Dodd-Frank Act and Commission regulations promulgated under those provisions to activities outside the United States that have a direct and significant connection with activities in, or effect on, commerce of the United States. Section 2(i)(2) makes them applicable to activities outside the United States that contravene Commission rules promulgated to prevent evasion of Dodd-Frank.

[112] Proposal at 72269.

[113] *Id.*

[114] *See* ABA Letter, at 2; BPI Letter, at 1; FSF Letter, at 7–8; SIFMA Letter, at 4.

[115] ICI Letter, at 5; MFA Letter, at 4.

[116] MFA Letter, at 4.

[117] Citadel Letter 1, at 6.

[118] Citadel Letter 1, at 7.

[119] *See* Citadel Letter 1, at 7; Citadel Letter 2, at 7, FIA PTG Letter, at 1–2, MFA Letter, at 4.

liquidity once post-trade name give-up is prohibited suggests that overall liquidity is not likely to decline.

A number of commenters asserted that without post-trade name give-up on dealer-to-dealer SEFs, pricing and liquidity offered by dealers to clients via RFQ or over-the-counter (OTC) may suffer.[120] Some of these commenters stated that post-trade name give-up helps dealers predict their hedging costs and tailor their pricing on RFQ SEFs.[121] They argued that prohibiting the practice would likely result in inferior pricing for clients on RFQ SEFs.[122] Similarly, commenters asserted that post-trade name give-up enables dealers to hedge the risk they accumulate by providing liquidity to clients off-SEF.[123] FSF argued that if dealers widen spreads as a result of a prohibition on post-trade name give-up, commercial end users may be disproportionately harmed because they rely more exclusively on dealer pricing and generally do not trade in cleared swaps on SEFs.[124] The Coalition for Derivatives End-Users (Coalition) stated that they ''have heard from bank swap dealers that the Proposed Rule would result in less liquidity and worse pricing on SEFs, which in turn may increase costs for derivatives end users hedging transactions in the non-cleared OTC derivatives markets.'' [125] The Coalition also stated that they ''have heard from other market participants that, under the Proposed Rule, liquidity would increase and result in better pricing on SEFs, which in turn may drive down costs for derivatives end-users in the non-cleared OTC derivatives markets.'' [126] The Coalition further stated that it ''lacks the empirical data and institutional knowledge to reach a firm conclusion as to the effects of the Proposed Rule on the ability of end-users to access efficient and economical markets to hedge their commercial risks.'' [127]

SIFMA AMG and Citadel each generally disagreed with the notion that client pricing will be harmed by a prohibition on post-trade name give-up.[128] Citadel asserted that, ''if anything, pricing should become more competitive, as buy-side firms gain access to additional sources of liquidity and will have more pre-trade price information on which to transact''; [129] and that ''increasing competition should lower transaction costs, thereby facilitating dealer hedging.'' [130]

The Commission continues to believe that prohibiting post-trade name give-up is likely to increase competition on affected SEFs, which in turn should lead to lower overall transaction costs.[131] The Commission is basing its belief on several studies described in the benefits section below, finding that post-trade anonymity tends to reduce trading costs and lead to better price quotes and lower realized spreads.[132] Nevertheless, the Commission acknowledges that it is theoretically possible that the prohibition on post-trade name give-up could lead to increased trading costs associated with some OTC swaps, even if, as the Commission anticipates, it leads to improved liquidity and lower transaction costs for swaps traded on SEFs. One study reviewed by the Commission, as discussed below, describes a theoretical scenario, where post-trade anonymity in swaps and bond markets could lead to an increase in OTC spreads and a simultaneous decrease in spreads on exchanges that ultimately improves overall welfare of market participants.[133]

2. Benefits

The Commission believes that implementing the rule may reduce information asymmetries and improve liquidity, particularly on affected SEFs, and may reduce transaction costs and bid-ask spreads. The practice of post-trade name give-up and the prospect of information leakage have reportedly deterred a significant segment of market participants from making markets on or otherwise participating on affected SEFs. The Commission expects that many of these market participants will choose to participate on these SEFs once the practice is prohibited, leading to increased liquidity. Increased liquidity may benefit market participants by making it easier to execute transactions, especially larger transactions, quickly and without undue price impact.

In order to evaluate the expected benefits of implementing the rule, the Commission reviewed several empirical studies examining prior experiences with changes in post-trade anonymity. As detailed in the Proposal, the studies covered the experiences in U.S. securities markets and a wide range of foreign financial markets and, on balance, support the premise that post-trade anonymity promotes trading liquidity. Commenters in favor of the prohibition of name give-up cited other studies that further support the benefits of fully-anonymous trading. Commenters not in favor of prohibiting post-trade name give-up did not provide data, evidence, or studies regarding the impact of post-trade anonymity.

Specifically, as discussed in more detail in the Proposal, the Commission reviewed six event studies focusing on post-trade anonymity in various equity exchanges around the world, most of which document an improvement in liquidity. The Commission acknowledges that none of these studies examine a change in post-trade anonymity for a swaps market, but the studies do provide real-world evidence on the effects on liquidity in a range of markets when the rules for post-trade anonymity are changed. Hence, they provide the most instructive empirical evidence available regarding a proposed change in such rules. Four of these studies, which focus on European equity markets, provide evidence of a liquidity improvement associated with post-trade anonymity,[134] which could be attributed to a reduction of information leakage.[135] A study on the 2003 introduction of post-trade anonymity on the NASDAQ platform found no evidence that best quotes were improved,[136] while a study on the South Korea Exchange found that reducing post-trade anonymity led to lower realized spreads.[137] The Commission

[120] *See* ABA Letter, at 2; Citi Letter, at 3–4; FSF Letter, at 2 and 5–6; JPMorgan Letter, at 5–6.

[121] *See* JPMorgan Letter, at 5–6; FSF Letter, at 2; Citi Letter, at 3.

[122] *See* Citi Letter, at 3–4; FSF Letter, at 5–6.

[123] ABA Letter, at 3; FSF Letter, at 2 and 5; Citi Letter, at 3–4.

[124] *See* FSF Letter, at 2 and 7.

[125] Coalition Letter, at 1.

[126] *Id.*

[127] *Id.* at 2.

[128] *See* Citadel Letter 1, at 7; Citadel Letter 2, at 11; SIFMA AMG Letter, at 2.

[129] Citadel Letter 1, at 7.

[130] Citadel Letter 2, at 11.

[131] *See* Proposal at 72269.

[132] The Commission does note that reductions in transaction costs may lead to a reduction in profits for incumbent liquidity providers and thus, these lower costs may be perceived as a cost for those liquidity providers, even as it is perceived as a benefit for other market participants.

[133] T. Lee & C. Wang, *Why Trade Over-the-Counter? When Investors Want Price Discrimination* (2019 working paper).

[134] S. Freiderich & R. Payne, *Trading Anonymity and Order Anticipation,* 21 Journal of Financial Markets 1–24 (2014); T.G. Meling, *Anonymous Trading in Equities* (2019 working paper); P.J. Dennis & P. Sandas, *Does Trading Anonymously Enhance Liquidity?,* Journal of Financial and Quantitative Analysis 1–25 (2019); A. Hachmeister & D. Schierek, *Dancing in the Dark: Post-Trade Anonymity, Liquidity, and Informed Trading,* 34 Review of Quantitative Finance and Accounting 145–177 (2010).

[135] S. Freiderich & R. Payne, *Trading Anonymity and Order Anticipation,* 21 Journal of Financial Markets 1–24 (2014); J. Linnainmaa & G. Saar, *Lack of Anonymity and the Inference from Order Flow,* 25 Review of Financial Studies 1,414–1,456 (2012).

[136] K. Benhami, *Liquidity providers' valuation of anonymity: The NASDAQ Market Makers evidence* (2006 working paper).

[137] T.P. Pham, et al., *Intra-day Revelation of Counterparty Identity in the World's Best-Lit Market* (2016 working paper).

believes that on balance the empirical evidence presented in these academic studies supports the benefits of anonymous trading.

As discussed in more detail in the Proposal, the Commission also reviewed several theoretical studies. The studies present models with various levels of post-trade disclosure in different settings, and the results offer insight into the trade-offs associated with changes in post-trade anonymity, notwithstanding the fact that the studies did not directly examine the case of bilateral disclosure of counterparty identities immediately after each trade. The Commission found that the results of these theoretical studies were mixed. One study, for example, focused on the post-trade public disclosure of the trades of insiders in equity markets, and the authors concluded that public disclosure of insider trades accelerates the price discovery process.[138] Therefore, the results suggest that post-trade anonymity might strengthen asymmetric information problems in the market and lead to subsequently reduced liquidity by exacerbating the market maker's adverse selection problem. Another study concluded that public disclosure can reduce the informational efficiency of prices and reduce market liquidity, because informed traders reduce trading in order to preserve their informational advantage.[139]

The Commission also examined one theoretical study that explicitly addresses the practice of post-trade name give-up. The study, considered in more detail in the Proposal, modeled the investor choice between OTC markets and electronic order books.[140] The authors supported that the OTC market can detect and attract uninformed traders (*i.e.,* hedgers who are demanding liquidity but do not possess market moving information) by offering them lower spreads, which results in an increase in spreads for informed traders (*i.e.,* traders who demand liquidity in order to profit from the trade) in an electronic order book, as well as a decrease in average spreads and an increase in total volume. The authors concluded that a prohibition on post-trade name give-up would likely lead to an increase in overall welfare. They reasoned that, in the absence of post-trade name give-up, informed traders will continue to trade via RFQ in order to minimize exposure of their trading intentions, and that spreads in this venue will stay high to reflect this situation. On the other hand, uninformed traders will migrate to the order book and trade more, because spreads will decline due to the increased activity. They predicted that overall welfare would increase because the aggregate benefits of increased electronic trading at low spreads would more than offset the aggregate costs to informed traders who remain concerned about information leakage. The study is consistent with the Commission's recognition of the trade-offs in prohibiting post-trade name give-up.

Citadel cited two additional studies that the Commission did not consider in the Proposal, but which it has now reviewed.[141] These studies examined the effect of various levels of intermediation (*i.e.,* access to multiple market makers) on liquidity in OTC markets and may be closer to the setting of the swaps market. One study provided an empirical evaluation of the implications of the OTC market structure for non-financial firms in the foreign exchange derivatives market.[142] The authors documented extensive discriminatory pricing by dealers, who appeared to favor sophisticated customers, defined as those customers transacting high volume with multiple counterparties. However, clients trading on RFQ platforms, where they can request quotes from multiple dealers simultaneously, appeared to receive competitive pricing irrespective of the level of their sophistication which leads the authors to conclude that discriminatory pricing could be potentially eliminated with the use of a centralized order book. Finally, the authors argued that the lack of centralized dissemination of transaction prices provides dealers with an information advantage compared to clients, which enables them to extract information rents.[143] The Commission recognizes the empirical fact that trading costs appear to differ across different venues and for different traders, as this study emphasizes. Nonetheless, the Commission finds that the design of the study precludes strong causal statements regarding the causes and effects of the observed variation.

The second study, which provides a theoretical model of a generic OTC market, concluded that sophisticated investors, who have access to multiple market makers or other investors, face lower transaction costs.[144] The authors theorized that the availability of other trading counterparties (*i.e.,* more competition) forces market makers to provide better pricing. The Commission agrees with the broad conclusion that more active, competitive markets are welfare enhancing.

Several commenters addressed the Commission's review of academic studies in the Proposal. FSF, SIFMA, JPMorgan and TP ICAP each asserted that the studies on equity markets cited in the Proposal's Cost-Benefit Considerations (CBC) are not relevant because equity markets are not comparable to the swaps market.[145] JP Morgan stated that ''swap markets have many fewer participants, of which institutional participants constitute a far larger proportion, much lower trading frequency, far greater variation in tradeable products, and much larger typical trade sizes.'' [146] The Coalition requested a quantitative analysis of the costs and benefits for commercial end users.[147] BPI, FSF, Citi and JPMorgan further asserted that the CBC is not sufficient and that further study is necessary.[148]

Better Markets, Citadel and AFR each commented that the Proposal, including the consideration of costs and benefits therein, provides a sufficient basis with which to move forward with a final rule.[149] Citadel also argued that the Proposal is consistent with the Commission's previous decision in implementing part 37 not to limit SEF

[138] S. Huddart, J.S., Hughes & C.B. Levine, *Public Disclosure and Dissimulation of Insider Trades,* Econometrica, Vol. 69, No. 3 (May 2001), 665–681.

[139] A.M. Buffa, *Insider Trade Disclosure, Market Efficiency, and Liquidity* (2014 working paper).

[140] T. Lee & C. Wang, *Why Trade Over-the-Counter? When Investors Want Price Discrimination* (2019 working paper).

[141] *See* Citadel Letter 2, at 16.

[142] H. Hau, P. Hoffmann, S. Langfield, & Y. Timmer, *Discriminatory pricing of over-the-counter derivatives* (2017 working paper). We note that, while the paper focuses on the foreign exchange derivatives market, its conclusions regarding the impact of multi-dealer RFQ platforms are generally applicable across markets.

[143] *Id.*

[144] D. Duffie, N. Gârleanu, & L.G. Pedersen, *Valuation in Over-the-Counter Markets,* Review of Financial Studies, Vol. 20, No. 5 (2007).

[145] *See* FSF Letter, at 9; SIFMA Letter, at 3; JPMorgan Letter, at 9; TP ICAP Letter, at 5.

[146] JPMorgan Letter, at 9. *See also* FSF Letter, at 9 (''The swap markets have many fewer participants, much lower trading volume, far greater variation in tradable products, and much larger typical trade sizes.'').

[147] Coalition Letter, at 2. The Commission notes that it is not possible to conduct a quantitative analysis of the costs and benefits to commercial end users of a prohibition on post-trade name give-up prior to finalizing the rule, because there is no data on the effects until after the rule is implemented.

[148] *See* BPI Letter, at 2; FSF Letter, at 12; Citi Letter, at 3; JPMorgan Letter, at 13–14. *See also* ABA Letter, at 2 (''[W]e see no relevant data cited in the Proposed Rule to support the contention that the prohibition would attract sufficient additional non-dealer market participants to CLOB SEFs to outweigh these negative consequences.'').

[149] *See* AFR Letter, at 1; Better Markets Letter, at 5; Citadel Letter 1, at 11; Citadel Letter 2, at 14–15.

access to just swap dealers, and therefore the Commission can rely on its cost-benefit considerations for that rulemaking to support a prohibition on post-trade name give-up.[150] Citadel further argued that claims by some commenters that commercial end-users transacting swaps off-SEF might be negatively affected by the Proposal conflicts with academic research.[151]

The Commission notes that commenters who support prohibiting post-trade name give-up generally considered the academic studies discussed in the Proposal to be informative, while commenters who oppose the prohibition assert that the studies are not informative because swaps markets are different than equity markets. The Commission acknowledges that there are differences between the equity markets in most of these empirical studies and the U.S. swaps markets. Further, the Commission understands that the equity markets examined do not generally mirror the exact dealer-centric swaps markets under consideration. Nonetheless, the wide range of markets, time periods, and experiences considered in the empirical studies leads the Commission to conclude that the value of anonymous trading is well-established. Moreover, to the extent that liquidity provision in swaps markets is more concentrated than in the most active and liquid equity markets, the empirical studies that provide evidence on smaller equity markets, or on the less liquid stocks in a given market, might be most informative.

Some of the equity markets studied may be deeper and more liquid than the U.S. swaps market. However, several of the markets studied are equity markets that are smaller than the U.S. equity market (*e.g.,* Finland, Norway, and Sweden), and therefore potentially more comparable to the swaps markets in the U.S. For example, one of the early empirical studies on the implementation of post-trade anonymity on the London Stock Exchange in 2001 finds that liquidity improvements were more pronounced for small stocks and stocks with higher trading concentration, which were potentially subject to larger information asymmetries. The Commission notes that, with respect to the smaller universe of liquidity providers, markets for smaller stocks could be more analogous to swaps markets than markets for larger and more liquid stocks with a broader array of market participants.

Commenters who objected to the application of the studies did not provide evidence to support the argument that the differences between the anonymous order books in swaps and equity markets would prevent the liquidity improvement associated with greater post-trade anonymity, as suggested by the empirical studies in equity markets. Accordingly, the Commission agrees with those commenters who stated that the studies are instructive for U.S. swap markets, since they share the use of pre-trade anonymous order books and these studies appear to be of markets that are more analogous to swap markets than any other empirical study the Commission or commenters have identified.[152]

The Commission believes that prohibiting post-trade name give-up is reasonably likely to improve liquidity on SEFs, particularly on affected pre-trade anonymous markets, as additional market participants choose to participate on these markets once post-trade name give-up is prohibited. The Commission has not found convincing evidence that a prohibition on post-trade name give-up will have net liquidity-reducing effects. Rather, the Commission notes that the evidence from the studies, as discussed above, suggests that markets with pre- and post-trade anonymity generally feature greater liquidity than those without. Moreover the Commission is concerned that the status quo may facilitate information asymmetries and hinder access and participation on affected SEFs for many market participants. The Commission believes that the rule as adopted may benefit market participants by reducing these information asymmetries and will increase participation on these SEF platforms.

3. Consideration of Alternatives

TP ICAP suggested the alternative that any prohibition on post-trade name give-up should be limited to, at most, swaps subject to the clearing requirement rather than all swaps that are intended to be cleared, because a SEF may not know whether the parties to a voluntarily-cleared swap will submit the swap to a DCO, as the parties may do so themselves post-execution. The Commission has determined not to adopt this alternative. The Commission notes that whether a swap is intended to be cleared is a material term that affects trade pricing and trade processing workflows, and it is something that SEF should be able to determine at the time of execution, including for voluntarily-cleared swaps. Thus, the Commission believes that the final rule, which applies the prohibition to voluntarily-cleared swaps, will enable a larger scope of swaps to receive the benefits associated with the regulation, including, potentially, greater participation and improved liquidity. However, to ensure that SEFs are provided with adequate time to make any necessary changes to their systems, the Commission is providing a phased compliance schedule, as discussed above.

A number of commenters suggested that before implementing a full post-trade name give-up prohibition, the Commission should implement a time-limited pilot program that would prohibit post-trade name give-up for some, but not all, products.[153] These commenters asserted that a pilot program would allow the Commission to assess the impact of a post-trade name give-up prohibition before requiring market-wide changes. The Commission has determined not to adopt this alternative. A temporary pilot program may provide market participants with different incentives than a permanent rule and thus may not be indicative of the efficacy of a permanent rule. As Citadel noted, ''a short-term pilot would be easily susceptible to manipulation. Given their commercial interests in maintaining the *status quo* and privileged position as liquidity providers, the incumbent dealer banks could temporarily provide worse pricing for instruments covered by the name give-up prohibition in order to dictate the pilot results.'' [154] The Commission agrees that a pilot program could create an incentive to engage in such conduct, but a permanent prohibition will not.

FSF and JP Morgan suggested the alternative approach whereby the Commission would require every order book SEF that offers post-trade name give-up to design a method that would permit its participants to opt out of post-trade name give-up, which could be through a parallel, fully-anonymous order book, or by allowing participants to opt-out of post-trade name give-up on

[150] Citadel Letter 2, at 14.

[151] Citadel Letter 2, at 15. Citadel cited two academic studies that it asserted ''suggests that commercial end-users may not be best-served by maintaining the current *status quo.*'' *Id.* These studies show that access to multiple market makers reduces trading costs.

[152] Citi did suggest that the Commission study the effects of post-trade anonymity on the emerging market bond market. Citi Letter, at 4. The Commission does not have jurisdiction over emerging market bonds and does not have access to the relevant data.

[153] *See* Citi Letter, at 5; JPMorgan Letter, at 14; FSF Letter, at 14.

[154] Citadel Letter 2, at 16.

an order-by-order basis.[155] In the view of FSF, this approach would provide freedom for market participants to transact in the manner in which they wish to, while providing the option of fully-anonymous trading to buy-side clients concerned with undesirable information leakage.[156] The Commission has determined not to adopt this alternative. The Commission believes that post-trade name give-up is likely to persist wherever it is permitted, and that this alternative would provide little or no benefit while still imposing costs on SEFs that are at least as high as those of a full prohibition (as SEFs would need to change their systems to allow opting out). The Commission agrees with Citadel's statement that one ''would expect incumbent dealer banks not to agree to opt-out of name give-up, meaning that very little would change on [interdealer broker] SEFs.'' [157]

FSF suggested an alternative whereby the Commission would exclude from the prohibition on post-trade name give-up any SEF that obtains a material portion of its trading volume, over a specified period, through workups. JPMorgan and FSF asserted that post-trade name give-up is an integral part of workup protocols, and the prohibition will impair workup protocols and adversely affect dealers' ability to hedge via adverse selection. In contrast, Citadel and MFA assert that post-trade name give-up is not necessary for workup sessions. Citadel asserted that if a trading protocol is pre-trade anonymous, there is no need to disclose the trading counterparties in order to engage in a workup session and, therefore, workup sessions will function just as they do today. Citadel also stated that claims to the contrary ''are easily disproven by looking at the U.S. Treasury market, where work-ups are commonly employed on interdealer platforms even though name give-up is not used.'' [158] MFA further argued that prohibiting post-trade name give-up would benefit trading protocols such as auctions, portfolio compression, and/or workup sessions by increasing buy-side access and participation.

The Commission has determined not to adopt this alternative. The Commission agrees with those comments asserting that post-trade name give-up is not necessary for workup sessions and that post-trade anonymity will not make workup sessions more difficult or costly and may provide the benefits associated with increased participation. The reasons given by JPMorgan and FSF relating to why they view post-trade name give-up to be an important aspect of workup sessions are essentially the same reasons espoused for the purported benefits of post-trade name give-up generally, *i.e.,* avoiding adverse selection and ensuring reliable hedging for incumbent swap dealers.

Some commenters proposed an alternative of not applying the prohibition on post-trade name give-up to error trade corrections. Commenters asserted that post-trade name give-up remains necessary for counterparties to correct operational or clerical errors resulting in a trade being rejected for clearing. Citadel disagreed with these commenters, noting that SEFs can facilitate the correction of errors without disclosing the identities of counterparties. The Commission has determined not to adopt this alternative. A SEF can intermediate communications, if necessary, and otherwise facilitate error trade corrections without disclosing counterparty identities. The Commission acknowledges that some SEFs may incur additional costs associated with ensuring that their rules and procedures for error trades allow for error trade remediation without disclosure of the identities of counterparties to one another. The Commission notes that designated contract markets resolve error trades without engaging in name give-up, and SEFs already intermediate the resolution of error trades to varying degrees. The Commission believes that the additional costs some SEFs may incur to employ anonymous error trade remediation are relatively modest.

4. Section 15(a) Factors

a. Protection of Market Participants and the Public

The final rule is intended to protect market participants and the public by advancing the statutory goals of: (1) Promoting swaps trading and pre-trade price transparency on SEFs; (2) fostering fair competition among market participants; (3) providing market participants with impartial access to SEFs; and (4) maintaining the privacy of swap transaction information.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

The final rule is intended to enhance competitiveness in the swap markets by removing an effective barrier to participation on SEFs for many market participants who are concerned with the prospect of information leakage. The Commission expects participation on SEFs to increase as a result, leading to greater competition.

c. Price Discovery

The Commission believes that by increasing participation and competition on SEFs, the final rule will decrease information asymmetries between market participants, allowing market participants to attain broader knowledge of pricing across more SEFs, thereby enhancing SEF trading as a mechanism for price discovery.

d. Sound Risk Management Practices

Similarly, increased participation and competition on SEFs and decreased information asymmetry among market participants is likely to enhance SEF trading as a mechanism for risk management.

e. Other Public Interest Considerations

Post-trade name give-up is inconsistent with provisions intended to protect the privacy of a swap counterparty's trading information. Prohibiting post-trade name give-up will help to effectuate the statutory privacy protections under CEA section 21(c)(6) that apply to this information. Moreover, the Commission believes that the prohibition is reasonably likely to lead to enhanced liquidity and lower transaction costs.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[159] The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. In the Proposal, the Commission requested comments on whether: (1) The proposed rulemaking implicates any other specific public interest to be protected by the antitrust laws; (2) the proposed rulemaking is anticompetitive, and if it is, what are anticompetitive effects; and (3) there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rules.

The Commission does not anticipate that the amendments to part 37 that it is adopting today will result in anticompetitive behavior, but instead, believes that the amendments will

[155] FSF Letter, at 14, JPMorgan Letter, at 15.

[156] FSF Letter, at 14.

[157] *See* Citadel Letter 2, at 16.

[158] Citadel Letter 2, at 11.

[159] 7 U.S.C. 19(b).

promote greater competition on, and among, SEFs. In the proposal, the Commission encouraged comments from the public on any aspect of the rulemaking that may have the potential to be inconsistent with the antitrust laws or be anticompetitive in nature. The Commission received two comments asserting that the proposed rule may be anticompetitive. JPMorgan commented that prohibiting post-trade name give-up ''would itself impair competition and pose an unreasonable restraint on trade by forcing dealers to trade fully anonymously in order to access a [central-limit order-book], even though dealers prefer [post-trade name give-up] . . . .'' [160] FSF similarly commented that ''banning name give-up would itself impair competition (certainly, innovation and competition among markets) and unnecessarily push dealers to trade fully anonymously in order to access an Order Book SEF, despite their bona fide preference for name give-up.'' [161] As stated above, the Commission disagrees with comments that prohibiting post-trade name give-up would impair competition. Post-trade name give-up is an ancillary post-trade protocol, and not a method of execution. It does not proscribe SEFs from offering any existing execution method, nor does it prevent SEFs from developing new execution methods. Moreover, the Commission is concerned by other commenters' assertions that post-trade name give-up enables anticompetitive behavior,[162] and the Commission believes that prohibiting post-trade name give-up will reduce the opportunity for such behavior to occur, and is therefore reasonably necessary to promote fair competition among market participants. The Commission has considered the rulemaking and related comments to determine whether it is anticompetitive and continues to believe that these amendments to part 37 will not result in anticompetitive behavior.

List of Subjects in 17 CFR Part 37

Swaps, Swap execution facilities.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 37 as follows:

PART 37—SWAP EXECUTION FACILITIES

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3, and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 2. In § 37.9, add paragraph (d) to read as follows:

§ 37.9 Methods of execution for required and permitted transactions.

* * * * *

(d) *Counterparty anonymity.* (1) Except as otherwise required under the Act or the Commission's regulations, a swap execution facility shall not directly or indirectly, including through a third-party service provider, disclose the identity of a counterparty to a swap that is executed anonymously and intended to be cleared.

(2) A swap execution facility shall establish and enforce rules that prohibit any person from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared.

(3) For purposes of paragraphs (d)(1) and (2) of this section, ''executed anonymously'' shall include a swap that is pre-arranged or pre-negotiated anonymously, including by a participant of the swap execution facility.

(4) For a package transaction that includes a component transaction that is not a swap intended to be cleared, disclosing the identity of a counterparty shall not violate paragraph (d)(1) or (2) of this section. For purposes of this paragraph, a ''package transaction'' consists of two or more component transactions executed between two or more counterparties where:

(i) Execution of each component transaction is contingent upon the execution of all other component transactions; and

(ii) The component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

Issued in Washington, DC, on June 29, 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 Post-Trade Name Give-Up on Swap Execution Facilities—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—Joint Supporting Statement of Chairman Heath P. Tarbert, Commissioner Rostin Behnam, and Commissioner Dan M. Berkovitz

As we have previously stated,[1] it is a fundamental principle of exchange-style trading systems that the buyer and seller of a given financial instrument have no reason to know—and do not know—one another's identity.[2] This levels the playing field for counterparties of all sizes and types by allowing traders to enter and exit the market without exposing their trading positions and strategies.[3] As a result, markets with pre- and post-trade anonymity are generally not only fairer, but also feature greater liquidity, a more diverse set of market participants, and greater competition.[4]

[160] JPMorgan Letter, at 10.

[161] FSF Letter, at 10.

[162] *See supra* note 37 and accompanying text.

[1] Joint Statement of Chairman Heath Tarbert, Commissioner Rostin Behnam, and Commissioner Dan Berkovitz in Support of Proposed Rule Restricting Post-Trade Name Give-Up (Dec. 18, 2019).

[2] *See, e.g.,* Peter A. McKay, *CME and CBOT to Close Loophole,* Wall St. J. (Apr. 15, 2006) (''When stocks are traded on public exchanges, investors generally don't know who they are buying from or selling to. On futures exchanges, most investors expect the same thing when trading electronically.'').

[3] *See, e.g.,* Peter Madigan, *CFTC to Test Role of Anonymity in SEF Order Book Flop,* Risk (Nov. 21, 2014) (noting arguments that anonymity creates a more egalitarian market); Managed Funds Association (''MFA''), *Position Paper: Why Eliminating Post-Trade Name Disclosure Will Improve the Swaps Market* 8 (Mar. 31, 2015) (arguing that ''markets should remain anonymous to create a level playing field for all participants''); CFTC Market Risk Advisory Committee, *Panel Discussion: Market's Response to the Introduction of SEFs* 139 (Apr. 2, 2015) (''MRAC Meeting Transcript'') (noting buy-side reticence to use SEF order books with name give-up because of potential uncontrolled information leakage). This can prevent price discrimination based on the identity of the counterparty.

[4] *See, e.g.,* MRAC Meeting Transcript, *supra* note 3, at 154 (explaining that anonymous order books have facilitated liquidity and diverse participation in markets for other instruments, such as equities and futures); S. Freiderich & R. Payne, *Trading Anonymity and Order Anticipation,* 21 Journal of Financial Markets 1–24 (2014) (finding that post-trade anonymity improved market liquidity, particularly for small stocks and stocks with concentrated trading, which may be more analogous to swaps); Treasury Market Practices Group, *White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities* (Jul. 11, 2019) (stating that emergence of new types of market participants in the fully anonymous U.S. Treasury securities market has ''likely improved overall liquidity through enhanced order flow and competition'').

In the swaps market, a number of swap execution facilities (''SEFs'') provide for post-trade disclosure of the name of the counterparty, a practice that is known as ''name give-up.'' This protocol is a vestige of the pre-Dodd-Frank era, when few swaps were centrally cleared and market participants needed to know their counterparty's identity to manage the associated credit risk. Given the advent of central clearing, many have appropriately questioned the continuing need for post-trade name give-up for cleared swaps. Others have gone further, criticizing the practice as anticompetitive, an obstacle to broad and diverse participation on SEFs, and potentially inconsistent with numerous provisions of the Commodity Exchange Act (''CEA'') and Commission regulations.

In 2019, after considering responses to a request for comment on the issue,[5] the Commission issued a proposed rule (''Proposal'') to restrict name give-up such that trades that are executed anonymously on-SEF and cleared would remain anonymous after execution.[6] Public comments on the Proposal reflected a variety of differing viewpoints and interests. The agency carefully considered all comments in crafting the final rule we voted to approve today.

We believe the final rule reflects a balanced approach, is workable, and will improve overall market vibrancy. The rule prohibits name give-up for swaps that are executed anonymously and intended to be cleared. However, it does not apply to swaps that are not intended to be executed anonymously, such as trades done via a name-disclosed request for quote. The rule also includes a limited exception for package transactions [7] with at least one component that is an uncleared swap or a non-swap instrument. This exception reflects current technological and operational realities that require counterparty disclosure for the non-swap or non-cleared swap component of such trades.[8] In addition, the rule includes a phased implementation schedule to allow SEFs and market participants time to adjust to the changes.

We believe the rule's fundamental objective—protecting trading anonymity where it is possible to do so—is key to two statutory goals for the SEF regime: (1) Promoting swaps trading on SEFs [9] and (2) promoting fair competition among market participants, including through impartial access to a SEF's trading platform.[10] Indeed, we hope the rule will help attract a diverse set of additional market participants who have been deterred from trading on these platforms by the practice of post-trade name give-up, but remain interested in bringing liquidity and competition to SEFs.

The issue of name give-up can be a bit of a lightning rod, sometimes inciting passionate disagreements between stakeholders. We and CFTC staff stand ready to work with market participants and market operators to resolve any new issues that may arise as the rule is implemented. We hope that all parties to this debate can constructively move forward together toward the goals of sound derivatives regulation and robust financial markets.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I will vote in favor of today's final rule to prohibit post-trade name give-up practices for swaps executed, pre-arranged, or pre-negotiated anonymously on or pursuant to the rules of a swap execution facility (SEF) and intended-to-be-cleared (Final Rule).

As I have noted previously, I have concerns about the government banning an established trading practice that has evolved from natural market forces to support swaps liquidity provision. Client swap activity is inherently dealer and relationship-sourced. That is why the name-disclosed Request for Quote (RFQ) model has been highly favored over the anonymous Central Limit Order Book (CLOB) model in the client market. Although the Final Rule predicts that the ban on name give-up will result in increased participation and competition in the dealer-to-dealer market, I remain concerned that banning post-trade name give-up will negatively impact dealers' ability to hedge efficiently on existing inter-dealer platforms, which will ultimately lead to a degradation in the pricing and liquidity provision of swaps trading on dealer-to-client platforms. I am also doubtful that new entrants into the wholesale market will use the advantages of that participation to add any meaningful liquidity in the client market, making it even less certain that the benefits of enhanced competition hoped for in this Final Rule will be passed through to end-users.

Despite my concerns, I am supporting the Final Rule because it adopts an important exception from the prohibition, as well as an incremental approach that will give the Commission and market participants time to transition into compliance, observe the impact of the Final Rule, and make adjustments in the future, if necessary.

For example, the Final Rule includes a significant exception for package transactions that include a component transaction that is not a swap intended-to-be-cleared. The exception would include U.S. Treasury swap spread package trades involving an intended-to-be-cleared swap and a U.S. Treasury security component. These package transactions are rarely traded on dealer-to-client platforms, but make up a significant portion of volume on dealer-to-dealer platforms. Recognizing this important difference between markets is a small but necessary accommodation to ensure package trades can continue to be efficiently executed in light of this mandated change to market trading protocols.

The Final Rule also adopts staggered compliance deadlines, with the most liquid swaps coming into compliance first, and less liquid swaps becoming subject to the ban in July 2021. In the interim, the Commission plans to conduct a preliminary study of the Final Rule's impact on SEF trading by July 2021, with a further study to be conducted by July 2023. These studies will allow the Commission to assess if the ban on post-trade name give-up is, in fact, increasing competition and liquidity on SEFs, as the ban is intended to do. If a more fulsome analysis reveals that the ban has not yielded its expected benefits, or may not be appropriate for certain products given their liquidity profile, I expect further adjustments will be made to maintain a well-functioning swaps market.

Lastly, I would like to thank staff of the Division of Market Oversight for working with my staff to incorporate many of my comments into the Final Rule.

[FR Doc. 2020–14343 Filed 7–23–20; 8:45 am]

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[5] CFTC Request for Comment on Post-Trade Name Give-Up on Swap Execution Facilities, 83 FR 61,571 (Nov. 30, 2018).

[6] Post-Trade Name Give-Up on Swap Execution Facilities, 84 FR 72262 (Dec. 31, 2019).

[7] The rule defines a ''package transaction'' as ''consist[ing] of two or more component transactions executed between two or more counterparties where: (i) Execution of each component transaction is contingent upon the execution of all other component transactions; and (ii) the component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.''

[8] As noted in the preamble to the final rule, we urge SEFs and their participants to work towards an infrastructure that ultimately does support anonymous post-trade processing for packages including certain cleared non-swap components (*e.g.,* U.S. Treasuries). The preamble to the final rule also notes the Commission's intention to monitor market developments and evaluate the continued need for the package transaction exception in the future.

[9] CEA section 5h(e), 7 U.S.C. 7b–3(e). In this regard, the CFTC intends to complete a preliminary study of the state of swaps markets one year after the initial phase of the rule takes effect, and to follow up with further study after the rule has been in effect for three years.

[10] CEA section 3(b), 7 U.S.C. 5(b) (listing fair competition among market participants as a goal of the CEA); CEA section 5h(f)(2)(B)(i) (requiring a SEF to establish and enforce rules to provide participants impartial access to the market).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 122

[CBP Dec. 20–10]

Technical Amendment to List of User Fee Airports: Addition of Four Airports

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations by revising the list of user fee airports to reflect the designation of user fee status for four additional airports: New York Stewart International Airport in New Windsor, New York; Lakeland Linder International Airport in Lakeland, Florida; Boca Raton Airport in Boca Raton, Florida; and Ontario

International Airport in Ontario, California. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the customs services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

DATES: Effective July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Chris Sullivan, Director, Alternative Funding Program, Office of Field Operations, U.S. Customs and Border Protection at *Christopher.J.Sullivan@cbp.dhs.gov* or 202–344–3907.

SUPPLEMENTARY INFORMATION:

Background

Title 19, part 122 of the Code of Federal Regulations (19 CFR part 122) sets forth regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce. Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport and, if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of the Trade and Tariff Act of 1984 (Pub. L. 98–573, 98 stat. 2948, 2994 (1984)), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Commissioner of CBP [1] as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP determines that the volume or value of business at the airport is insufficient to justify the unreimbursed availability of customs services at the airport and the governor of the state in which the airport is located approves the designation. As the volume or value of business cleared through this type of airport is insufficient to justify the availability of customs services at no cost, customs services provided by CBP at the airport are not funded out of appropriations from the general treasury of the United States. Instead, customs services provided by CBP are paid for by the user fee airport. The fees charged must be paid by the user fee airport and must be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. *See* 19 U.S.C. 58b.

The Commissioner of CBP designates airports as user fee airports in accordance with 19 U.S.C. 58b and pursuant to 19 CFR 122.15. User fee airports are designated on a case-by-case basis. If the Commissioner decides that the conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the user fee airport sponsor.

The list of designated user fee airports is set forth in 19 CFR 122.15(b). Periodically, CBP updates the list to reflect designated airports that have not yet been added to the list and to reflect any changes in the names of the designated user fee airports.

Recent Changes Requiring Updates to the List of User Fee Airports

This document updates the list of user fee airports in 19 CFR 122.15(b) by adding the following four airports: New York Stewart International Airport in New Windsor, New York; Lakeland Linder International Airport in Lakeland, Florida; Boca Raton Airport in Boca Raton, Florida; and Ontario International Airport in Ontario, California. During the last several years, the Commissioner of CBP signed MOAs designating each of these four airports as a user fee airport.[2]

Inapplicability of Public Notice and Delayed Effective Date Requirements

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency is exempted from the prior public notice and comment procedures if it finds, for good cause, that such procedures are impracticable, unnecessary, or contrary to the public interest. This final rule makes conforming changes by updating the list of user fee airports to add four airports that have already been designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b as user fee airports. Because this conforming rule has no substantive impact, is technical in nature, and does not impose additional burdens on or take away any existing rights or privileges from the public, CBP finds for good cause that the prior public notice and comment procedures are impracticable, unnecessary, and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act and Executive Orders 12866 and 13771

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866. Additionally, because this amendment is not a significant regulatory action it is not subject to the requirements of Executive Order 13771.

Paperwork Reduction Act

There is no new collection of information required in this document; therefore, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This document is limited to a technical correction of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b). The Acting Commissioner Mark A. Morgan, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

Amendments to Regulations

Part 122, of title 19 of the Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority citation for part 122 continues to read as follows:

[1] Sections 403(1) and 411 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 stat. 2135, 2178–79 (2002)), codified as amended at 6 U.S.C. 203(1) and 211, transferred certain functions, including the authority to designate user fee facilities, from the U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security. The Secretary of Homeland Security delegated the authority to designate user fee facilities to the Commissioner of CBP through Department of Homeland Security Delegation, Sec. II.A., No. 7010.3 (May 11, 2006).

[2] The Commissioner of CBP signed an MOA designating Ontario International Airport on March 23, 2018; Boca Raton Airport on August 25, 2017; New York Stewart International Airport on June 21, 2017; and Lakeland Linder International Airport on November 16, 2016.

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

■ 2. In § 122.15, amend the table in paragraph (b) by adding entries for ''Boca Raton, Florida'', ''Lakeland, Florida'', ''New Windsor, New York'', and ''Ontario, California'' in alphabetical order to read as follows.

§ 122.15 User fee airports.

* * * * *

(b) * * *

Location	Name
* * * * * * *	
Boca Raton, Florida	Boca Raton Airport.
* * * * * * *	
Lakeland, Florida	Lakeland Linder International Airport.
* * * * * * *	
New Windsor, New York	New York Stewart International Airport.
Ontario, California	Ontario International Airport.
* * * * * * *	

* * * * *

Dated: July 14, 2020.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2020–15475 Filed 7–23–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1309

[Docket No. DEA–501]

RIN 1117–AB51

Registration and Reregistration Fees for Controlled Substance and List I Chemical Registrants

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is adjusting the fee schedule for registration and reregistration fees necessary to recover the costs of its Diversion Control Program relating to the registration and control of the manufacture, distribution, dispensing, importation and exportation of controlled substances and list I chemicals as mandated by the Controlled Substances Act (CSA). This final rule adopts the notice of proposed rulemaking published on March 16, 2020, to change the fee schedule and codify existing practices of the issuance of refunds by DEA for applicant registration fees, without change.

DATES: This final rule is effective October 1, 2020. The new fee schedule will be in effect for all new applications submitted on or after October 1, 2020, and for all renewal applications submitted on or after October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting & Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

I. Executive Summary

The Diversion Control Program

DEA's Diversion Control Program (DCP) is administered by the Diversion Control Division (DC). DC ensures the availability of controlled substances and listed chemicals for legitimate use in the United States. The DCP is responsible for maintaining a closed system of distribution by preventing diversion of controlled substances and listed chemicals in the United States and enforcing the provisions of the CSA for DEA. The DCP regulates over 1.8 million registrants, ensuring their compliance with the CSA.

Legal Authority

The DCP is a strategic component of DEA's law enforcement mission, which regulates the registration and control of the manufacture, distribution, dispensing, importation, and exportation of pharmaceutical controlled substances and listed chemicals. The DCP implements and enforces the CSA to help prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes.[1]

Under the CSA, DEA is authorized to charge reasonable fees relating to the registration and control of the manufacture, distribution, dispensing, import, and export of controlled substances and listed chemicals. 21 U.S.C. 821 and 958(f). DEA must set fees at a level that ensures the recovery of the full costs of operating the various aspects of its DCP. 21 U.S.C. 886a. Each year, DEA is required by statute to transfer the first $15 million of fee revenues into the general fund of the Treasury and the remainder of the fee revenues is deposited into a separate fund of the Treasury called the Diversion Control Fee Account (DCFA). 21 U.S.C. 886a(1). On at least a quarterly basis, the Secretary of the Treasury is required to reimburse DEA an amount from the DCFA ''in accordance with estimates made in the budget request of the Attorney General for those fiscal years'' for the operation of the DCP.[2] 21 U.S.C. 886a(1)(B) and (D). The first $15 million of fee revenues that are transferred to the Treasury do not support any DCP activities.

The Proposed Rule

DEA published a notice of proposed rulemaking (NPRM) on March 16, 2020, in the **Federal Register**, proposing new registration and reregistration fees for registrants, as well as proposing to codify existing practices of issuing refunds for these fees in limited

[1] The Attorney General's delegation of authority to DEA may be found at 28 CFR 0.100.

[2] The DCP consists of the pharmaceutical controlled substance and listed chemical diversion control activities of DEA. These activities are related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals (21 U.S.C. 886a(2)).

circumstances. 85 FR 14810. In the NPRM, DEA proposed to amend 21 CFR 1301.13, 1309.11, 1309.12, and 1309.21 within the Code of Federal Regulations.

In the NPRM, DEA proposed a new fee of $3,699 per year for manufacturers of controlled substances. For distributors, reverse distributors, importers, and exporters of controlled substances, DEA proposed a new fee of $1,850 per year. For controlled substance business activities involving dispensing, a new fee of $888 per three year cycle was proposed. For all other business activities of controlled substances (research, narcotic treatment programs (NTPs), and chemical analysis), the proposed new fee was $296 per year. For manufacturers of list I chemicals, DEA proposed a new fee of $3,699 per year. For distributors, importers, and exporters of list I chemicals, DEA proposed a new fee of $1,850 per year.

This final rule adopts the March 16, 2020, NPRM proposal to change the fee schedule and codify existing practices of the issuance of refunds by DEA for applicant registration fees, without change.

II. Background

History of Fees

In October 1992, Congress passed the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1993 (Pub. L. 102–395), which changed the source of funding for DEA's DCP from being part of DEA's annual Congressional appropriation to full funding by registration and reregistration fees through the establishment of the DCFA.[3] The Appropriations Act of 1993 required that ''[f]ees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program.'' The legislation did not, however, provide clarification on what constituted the ''Diversion Control Program,'' thus leaving open the issue as to what fee-setting criteria should be used to determine which costs could be reimbursed from the DCFA.

In response to the Appropriations Act of 1993, DEA published an NPRM in December 1992 to adjust the registration and reregistration fees for controlled substance registrants (57 FR 60148, December 18, 1992). In the absence of guidelines from Congress regarding the specific criteria to be followed in identifying costs and setting the fees, DEA relied on the plain language of the Appropriations Act of 1993 and proposed fees necessary to cover the costs of the activities that were identified within the budget decision unit known as the ''Diversion Control Program.''

At the time that the Appropriations Act of 1993 was passed, 21 U.S.C. 821 did not extend to chemical control activities; accordingly, there were no registration or fee requirements for handlers of list I chemicals. DEA therefore excluded chemical control costs from its Final Rule implementing the requirements of the Appropriations Act of 1993 (58 FR 15272, March 22, 1993). Congress amended 21 U.S.C. 821 on December 17, 1993, to require reasonable fees relating to ''the registration and control of regulated persons and of regulated transactions'' (Domestic Chemical Diversion Control Act of 1993, 3(a), Pub. L. 103–200, 107 Stat. 2333); however, despite this amendment, DEA continued to endeavor to maintain separate funding for its controlled substances diversion control and its chemical diversion control activities.

Following publication of DEA's Final Rule, the American Medical Association (AMA) and others filed a lawsuit objecting to the increase in registration and reregistration fees on the grounds that DEA had failed to provide adequate information as to what activities were covered by the fees and how they were justified. The district court issued its final order granting DEA's motion for summary judgment and disposing of all claims on July 5, 1994.[4] Upon AMA's appeal, the U.S. Court of Appeals for the District of Columbia Circuit remanded, without vacating, the rule to DEA, requiring the agency to provide an opportunity for meaningful notice and comment on the fee-funded components of the DCP. In doing so, the court confirmed the boundaries of the DCP that DEA can fund by registration fees, finding that the current statutory scheme (21 U.S.C. 821 and 958) required DEA to set reasonable registration fees to recover the full costs of the DCP. *See AMA* v. *Reno,* 57 F.3d 1129, 1135 (D.C. Cir. 1995). DEA responded to the remand requirement through a notice and comment in the **Federal Register** on December 30, 1996, describing the fee-funded components and activities of the DCP with an explanation of how each satisfies the statutory requirements for fee-funding (61 FR 68624–32, December 30, 1996).

Thus, in the absence of a simple, objective measure by which DCP costs could be identified and the appropriate fees calculated, both DEA and the courts have looked to 21 U.S.C. 821 and 958 to define the guidelines for determining what costs should be included in the calculation of the fees and from whom the fees might be collected.

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 2005 was signed into law on December 8, 2004, as Division B of the Consolidated Appropriations Act of 2005 (Pub. L. 108–447). Title IV, Section 634 of the Appropriations Act of 2005 provided clarification as to the activities constituting the DCP. The Appropriations Act of 2005 amended 21 U.S.C. 886a(2)(A) to define the Diversion Control Program as ''the controlled substance and chemical diversion control activities of the Drug Enforcement Administration,'' which are further defined as the ''activities related to the registration and control of the manufacture, distribution and dispensing, importation and exportation of controlled substances and listed chemicals.'' It also amended 21 U.S.C. 886a(1)(B) to provide that reimbursements from the DCFA ''shall be made without distinguishing between expenses related to controlled substances activities and expenses related to chemical activities.'' Finally, the Appropriations Act of 2005 amended 21 U.S.C. 821 and 958(f) to make the language of those sections consistent with the definition of the DCP (Pub. L. 108–447). The net effect of the amendments was to allow DEA to deposit all registration and reregistration fees (controlled substance and chemical) into the DFCA and fund all controlled substance and chemical diversion control activities from the account without distinguishing as to the type of activity (controlled substance or chemical) being funded.

Independent of the passage of the Appropriations Act of 2005, DEA undertook an internal reorganization to increase operational efficiencies and overall effectiveness. As discussed in detail in DEA's Final Rule published on August 29, 2006 (71 FR 51105), the resulting internal reorganization removed the focus from the single business decision unit of the DCP to a focus on diversion control activities irrespective of the business decision unit. That is, the diversion control activities of DEA are no longer contained in a single business decision unit identified as the DCP. Thus, in identifying the activities that constitute the DCP, DEA looks across the agency

[3] 21 U.S.C. 886a(1)(C).

[4] *AMA* v. *Reno,* 857 F. Supp. 80 (D.D.C. 1994).

at all functions related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals. This approach adheres both to the language contained in 21 U.S.C. 821 and 958 and to the court's requirement that there must be a nexus between the DCP's activities funded through fees, and the registration and control of the manufacture, distribution, and dispensing of controlled substances and listed chemicals of regulated persons and regulated transactions.

In keeping with this organizational and functional change, DEA continues to identify the diversion control activities to be funded by the DCFA. Accordingly, this NPRM describes the activities that constitute the DCP, irrespective of organizational structure within the agency and in compliance with 21 U.S.C. 821 and 958, and 21 U.S.C. 886a, which require that DEA charge reasonable fees relating to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals and that DEA collect fees adequate to fully fund the controlled substances and listed chemical diversion control activities that constitute the DCP, as defined by DEA.

The Department of Justice's (DOJ) Office of the Inspector General (OIG) completed a review of DEA's use of the DCFA in 2008 and did not find any misused DCFA funds for non-diversion control activities between Fiscal Year (FY) 2004 and FY 2007. To the contrary, the OIG found that DEA did not fully fund all diversion control costs with the DCFA as required by law.[5] Therefore, in 2011 DEA published a NPRM to continue efforts to fully fund the DCP. The 2011 NPRM included additional DCP costs which were identified in the OIG report and resulted in an approximately 33 percent fee increase across all registrant groups. The 2011 NPRM was finalized in 2012, and this was the last time DEA adjusted the fees prior to the current fee increase.

III. Diversion Control Program

Scope of the Diversion Control Program

The mission of DEA's DC is to prevent, detect and investigate the diversion of pharmaceutical controlled substances and listed chemicals from legitimate channels while ensuring an adequate and uninterrupted supply of pharmaceutical controlled substances and listed chemicals to meet legitimate medical, commercial, and scientific needs. This Division administers the DCP, which is responsible for enforcing the provisions of the CSA, as they pertain to ensuring the availability of controlled substances and listed chemicals for legitimate uses in the U.S., while exercising controls to prevent the diversion of these substances and chemicals for illegal uses. This Division maintains an overall geographic picture of drug and chemical diversion and abuse problems to identify new trends or patterns in diversion and abuse, which enables it to appropriately direct resources.

The DCP is executed by maintaining a closed system of distribution by regulating and managing over 1.8 million DEA registrants and investigating activity related to the diversion of pharmaceutical controlled substances and listed chemicals. To ensure accountability within the closed system of distribution, the DCP administers, maintains, and oversees DEA's registration system. This entails processing, reviewing, and, if necessary, investigating all applications for registration and reregistration, collecting fees, and, when appropriate, proposing to take administrative action on registrations or applications for registration, such as restriction, revocation, suspension, or denial of an application.

The DCP's regulatory function is accomplished by registering those entities that handle controlled substances or listed chemicals, conducting regulatory inspections, providing information and guidance to registrants, and controlling and monitoring the manufacture, distribution, dispensing, import, and export of controlled substances and listed chemicals. The DCP determines the appropriate procedures necessary for ordering and distributing schedule I and II controlled substances, using DEA Form 222 or its electronic equivalent.[6] This enables the DCP to monitor the flow of certain controlled substances from their point of manufacture through commercial distribution. The DCP also executes its regulatory functions by fulfilling its U.S. treaty obligations pertaining to the CSA, such as the preparation of periodic reports for submission to the United Nations (UN) as mandated by U.S. international drug control treaty obligations on the manufacture and distribution of narcotic and psychotropic substances, as well as determining the anticipated future needs for narcotic and psychotropic substances.

The DCP ensures that registrants are in compliance with the safeguards of the CSA. This allows for the identification and the prevention of diversion of pharmaceutical controlled substances and listed chemicals into illicit markets. Registrant compliance is determined primarily through pre-registration, scheduled, and complaint investigations. DCP regulatory activities have an inherent deterrent function, and they are designed to ensure that those businesses and individuals registered with DEA to handle controlled substances or listed chemicals have sufficient measures in place to prevent the diversion of these substances. These investigations also help registrants understand and comply with the CSA, identify those registrants who violate the CSA, and implement regulations. Pre-registration investigations reduce the possibility of registering unauthorized entities, ensure that the means to prevent diversion are in place, and determine whether registration is consistent with the public interest.

Not only does the DCP exercise authority and control over the registrant population, the DCP exercises authority over the classification of substances.[7] This is accomplished by evaluating drugs and chemicals to determine whether these substances are being abused or potentially involved in illicit traffic, and to evaluate whether any substances should be scheduled as a controlled substance or regulated as a listed chemical. This requires the collection and analysis of a large amount of data from various sources. These evaluations are used by DEA as a basis for developing appropriate drug control policies; determining the status of controlled, excluded, or exempted drugs and drug products; and supporting U.S. initiatives in international forums.

The DCP's authority over controlled substances and listed chemicals requires its support of domestic and foreign investigations of these substances. As such, the DCP serves as the competent national authority for the U.S. regarding listed chemicals and international treaties. The DCP works with the international community to identify and seize international shipments of listed chemicals destined for the U.S. The DCP also works on a bilateral basis to urge international partners to take effective action, in cooperation with chemical companies, to establish controls and prevent the diversion of listed chemicals from legitimate trade. In

[5] "Review of the Drug Enforcement Administration's Use of the Diversion Control Fee Account," I–2008–002, February 2008, *http://www.usdoj.gov/oig/reports/DEA/e0802/final.pdf.*

[6] 21 U.S.C. 828, 21 CFR part 1305.

[7] 21 U.S.C. 811–814.

addition to its other oversight and regulatory responsibilities in this area, the DCP reviews the importation and exportation notifications of listed chemicals.

The DCP also controls the manufacture of controlled substances by setting the aggregate production quotas, individual manufacturing quotas, and procurement quotas for basic classes of schedule I and II controlled substances. Similarly, the DCP controls the manufacture of list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine by setting the assessment of annual needs, individual manufacturing quotas, procurement quotas and import quotas for these three list I chemicals. As such, the DCP maintains and monitors the Year-End Reporting System/Quota Management System (YERS/QMS), which provides information on entities manufacturing schedule I and II controlled substances and list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. Furthermore, the DCP issues import and export registrations and permits, and monitors declared imports, exports, and transshipments of these substances. The DCP must ensure that all imports and exports of controlled substances and listed chemicals meet the requirements of the CSA. As such, the DCP maintains and monitors many electronic reporting systems, such as the Chemical Handlers Enforcement Management System, which provides information on entities manufacturing, distributing, and exporting and importing regulated chemicals, and encapsulating and tableting machines.[8]

To effectively execute its regulatory functions, the DCP reviews legislation pertinent to the availability of controlled substances and listed chemicals for legitimate uses in the U.S. and controls to prevent the diversion of these substances and chemicals. The DCP drafts and implements regulations to keep DEA in compliance with legislation enacted by Congress. The DCP constantly reviews its own regulations and develops and implements regulations designed to enhance DEA's diversion control efforts. The DCP's regulatory activities also require education and outreach to ensure understanding of and compliance with the CSA and applicable regulations, and to ensure registrants have sufficient measures in place to prevent diversion. The DCP's outreach efforts include establishing and maintaining liaison and working relationships with other Federal agencies, the regulated community, and foreign, state, and local governments. Other efforts include developing and maintaining manuals and other publications; organizing and conducting national conferences on current issues, policies, and initiatives; and providing scientific support for policy guidance, expert witness testimony, and conference presentations.

The DCP continues to address the growing threat of synthetic substances through the collection and evaluation of pharmacological, medical, epidemiological and other scientific data for new drugs of abuse and when appropriate, initiate the necessary administrative procedures to place these substances under regulatory control.

Since the last fee increase in 2012, the nature of the diversion control problem has increased in size and complexity. The increased diversion threats and changing diversion schemes such as the opioid epidemic, as well as amendments to the CSA, have necessitated the need to increase DEA registration fees in order to fully fund all aspects of the DCP.

Although DEA has been fiscally responsible and has not increased registration fees since 2012, a registration fee increase is needed. This increase will fund personnel and operations supporting the DCP's mission to prevent and detect diversion, protect the closed system of distribution in the U.S., and combat the nation's opioid crisis. Without an increase in registration fees, DEA will be unable to continue current operations and will be in violation of the statutory mandate that fees charged ''shall be set at a level that ensures the recovery of the full costs of operating the various aspects of [the diversion control program].'' 21 U.S.C. 886a(1)(C).

IV. Discussion of Comments

Following publication of the NPRM on March 16, 2020, 85 FR 14810–14837, DEA received twelve comments in response to the rule. Of these comments, five comments are out of scope in their entirety, and did not address the fee calculation or the issuance of refunds by DEA for applicant registration fees. Two comments supported the proposed rule in part. The remainder of the comments expressed concern about the fee increase, as further described below.

Support for the Fee Increase and Proposal To Grant Registration Refunds

Issue: An association agreed with DEA's proposed methodology for the new fee calculation and the proposal to grant registration fee refunds under certain circumstances. The commenter expressed its appreciation for DEA's acknowledgement that there will be a certain amount of honest errors either on the part of the registrant or on DEA's part. This commenter wrote that the proposed rule provides a useful explanation of the three alternative methodologies to calculate the new registration fees and agreed with DEA's selection of the weighted-ratio method. The commenter wrote that because all supply chain trading partners share a responsibility for helping to avoid the misuse/abuse of the controlled substances and other products that DEA regulates, adopting a method that applies an equivalent increase to all registrants is reasonable.

Another association also supported the proposal to allow the Administrator to refund registration fees under certain circumstances. They requested that information regarding the refund process be easily accessible, and that an efficient process be established to issue the refunds.

DEA Response: DEA appreciates the support for the selected fee calculation methodology, and the codification of DEA policy regarding refunding of registration fees in certain circumstances. In developing the fee schedule, DEA conducted a thorough analysis of the identified fee calculation options—including the anticipated economic impact on registrants—and determined that the weighted-ratio option represents the most reasonable approach to calculate registrant fees sufficient to fully fund the DCP.

Based on the Administrator's discretionary authority, the refunds for fees will be issued under limited circumstances, to include applicant error, DEA error, and death of a registrant within the first year of the three-year registration cycle. The process for obtaining a refund will be made available on DEA Diversion Control's website (*www.deadiversion.usdoj.gov*).

Objection to the Fee Increase

Auditing Mechanisms

Issue: Two commenters, one of whom is a physician, the other of whom is anonymous, raised concern about tracking DEA's accountability with respect to the DCFA. These commenters wrote that an audit should be done on the DCFA to avoid waste and to ensure that the DCFA does not become a blank check for DEA to do whatever they want with it. In particular, the commenters were concerned with how the fees are being spent. The physician commenter objected to the fee increase and proposed that an independent, non-

[8] *See* 21 U.S.C. 830, 957–58.

governmental audit be performed on an annual basis to ensure that there is no fraud or waste of the fees.

DEA Response: As required by the Chief Financial Officers (CFO) Act, DOJ OIG annually audits DEA's financial statements, using a third party auditor (currently KPMG). These audits cover all of DEA's funding sources and lines of business, including the DCFA. DEA has received an unqualified audit opinion for approximately twenty years.

Additionally, DEA has established a robust system of internal controls to ensure that DEA recovers the full cost of the DCP, and that the DCFA is used only for all of that program's costs, as directed by law. These internal controls over non-personnel expenses are managed by the Cost Diversion Validation Unit. This unit is independent of the DCP and resides within the Financial Management Division, which is responsible for all of DEA's financial management, including that of the DCFA. The unit reviews every DCFA expenditure over $500 for a justification for how it relates to the DCP and ensures that DCFA funding is in compliance with established methodologies. The Cost Diversion Validation Unit recommends methodologies for the appropriate and consistent use of DCFA funding across commodities and cost areas, to ensure the funding is used to pay for only costs attributable to the DCP.

Along with the oversight of the Cost Diversion Validation Unit over non-personnel expenses, DEA's Office of Resource Management reviews the investigative work performed by DEA's workforce, including Special Agents, on a quarterly basis. These reviews enable DEA to ensure that the DCFA pays for all payroll costs associated with DCP casework and does not pay for the payroll or employees working on non-DCP casework. In instances where DCFA funded employees work on non-DCP cases, DEA's salaries and expenses (non-DCFA) account reimburses the DCFA for those payroll expenses. These internal controls ensure that DCFA funding is used only for the requirements of the DCP and not made available for non-diversion related expenses within DEA.

DC, as part of DEA, must adhere to Office of Management and Budget (OMB) Circular A–123, Management's Responsibility for Enterprise Risk Management,[9] and Internal Control and Federal Managers' and Financial Integrity Act[10] which have been at the center of Federal requirements to improve accountability in Federal programs and operations since 1981. Under OMB Circular A–123, DEA must maintain internal controls that reduce the risk of fraud, waste, and error. DEA is also responsible for establishing and maintaining internal controls to achieve specific internal control objectives related to operations, reporting, and compliance.

In addition to DEA's internal inspection and evaluation practices, DEA's programs are subject to external audits and reviews, as part of maintaining the public's trust in DEA's ability to manage resources in fulfillment of its mission. DOJ, OIG, and the Government Accountability Office (GAO) are the primary auditing agencies that review DEA's programs on an ad hoc basis. The outcome of external audits, whether positive or negative, has a significant impact on DEA's programs.

Moreover, all budget submissions for the DCP are subject to multiple levels of scrutiny and review within DEA, the DOJ, and OMB. Each of DEA's annual budget requests to Congress, which includes the DCP, is available for public view. Each budget request is examined and approved by both DOJ and OMB.

The DCP's implementation of internal inspection and evaluation practices coupled with federal mandates established by OMB, OIG, and GAO are sufficient to maintain DC's program integrity, efficiency, and transparency. All aspects of the DCP are inspected to detect any waste, fraud, or abuse. An external, non-governmental audit, as suggested by the physician commenter, would require a large expenditure of registrant fees, and would be excessive, given the other safeguards that are already in effect.

Hiring of Additional Personnel To Address DCP's Mission; Finalizing Rules and Updates to DEA Publications

Issue: The anonymous commenter raised concern about the increase in fees as it relates to the hiring of additional personnel, and the physician questioned what is being funded by registrant fees. The anonymous commenter stated that hiring personnel did not seem to be the answer because enforcement was not working on the opioid epidemic. The anonymous commenter further suggested that hiring additional people would not solve the problems of the opioid epidemic, and opined that DEA believes that additional people will magically solve the opioid epidemic. Both commenters stated that DEA has failed to meet many Congressional deadlines that were imposed by the enactment of various legislation. The physician also added that DEA has been slow to draft implementing regulations for statutory amendments to the CSA, and to draft other rules, schedule substances, or update manuals and publications that help registrants.

DEA Response: As a part of executing the DCP's mission, DEA is focused on combatting the opioid epidemic, as well as addressing the diversion of other controlled substances and listed chemicals. While DEA knows that the hiring of additional people will not automatically solve the epidemic, hiring more people will improve DEA's ability to successfully investigate diversion. By increasing personnel and devoting more resources towards prioritizing and drafting rules, DEA will be able to more efficiently and effectively meet deadlines and address diversion.

While DEA aims to meet every deadline Congress puts in place when creating new legislation, DEA's rulemaking process involves many steps. Where Congress has enacted statutory amendments to the CSA, such as the SUPPORT Act, DEA complies with these laws while finalizing implementing regulations for these amendments. Moreover, finalizing and implementing rules require the publication of proposed rules or interim final rules and final rules. These documents require significant drafting and analysis, as well as a lengthy review process to ensure that the rule is legal, fair, and will be effective in meeting the goal of the particular rule.

In the proposed rule to increase fees, DEA chose not to discuss any other proposed rules or their status, due to the sensitive nature of rule drafting, as well as the fact that proposed rules can change prior to finalization. However, DEA received comments questioning the necessity of the fee increase due to the fact that implementing regulations for statutory amendments to the CSA, as well as a regulation related to marijuana growers, have yet to be published. As stated above, the rulemaking process is lengthy and involves multiple phases. In 2019, DEA published two NPRMs, three Final Rules, and two Notices (regarding the setting of the aggregate production quota and assessment of annual needs). So far, in 2020, DEA has published three NPRMs and one Notice (to adjust the established aggregate production quotas and assessment of annual needs).

The physician commenter also noted that DEA's Diversion Control website Manuals and Publications section contains older manuals. However, this

[9] Office of Management and Budget (OMB) Circular No. A–123, *Management's Responsibility for Internal Control.*

[10] 31 U.S.C. 3512.

is not indicative of DEA's continuous efforts to keep policies and procedures current with regulations, technology, and industry best practices. DEA is in the process of updating the entire Manuals and Publications section on its website and several manuals are being drafted. DCFA funds will be used to provide the DCP with additional resources to update the manuals and outdated documents. The physician also contended that DEA publishes an average of only three scheduling actions per year. This is inaccurate. Since FY 2019 alone, DEA has published in the **Federal Register** over twenty final rules placing dangerous substances in schedules I and II of the CSA.

Quotas

Issue: The physician commenter raised a concern about DEA's process for setting quotas. In particular, the commenter did not understand how proposing new use-specific quotas would expedite the process or provide clarity. The commenter wrote that it is unsettling to pay for leadership that is unsure about how certain processes under their purview work.

DEA Response: DC's leadership fully understands the quota setting process and plays an active role in the rule-making process.

In addition, DEA is committed to ensuring that quotas are set in such a way as to grant manufacturers the ability to provide controlled substances to meet the demand of the legitimate medical, scientific, industrial, and research needs of the U.S. DEA is required to understand what is available for legitimate patient need versus what is available for product development to properly calculate the Aggregate Production Quota (APQ) and individual quotas. Additionally, as the number of manufacturers continues to increase and industry practices and specializations change, the ability to methodically track movements of material between registrants at all stages of manufacturing becomes more critical. Use-specific subcategories improve the efficiency of the application and reporting process for DEA-registered manufacturers. The specification of quota subcategories reflects the manufacturing activity of the applying DEA registrant, has facilitated the issuance of manufacturing and procurement quotas, and has provided a more accurate calculation of the APQs for the U.S. by preventing double counting of quotas. Use-specific quotas have been informally in place for well over a decade with no complaints from the registrants who have found the system beneficial in separating their product development and packaging efforts from their commercial manufacturing efforts when requesting adjustments to their quotas.

Education and Outreach Programs

Issue: The physician commenter suggested that DEA could save money and manpower by eliminating programs such as DEA 360 Strategy, National Take-Back Initiative (NTBI), and Tactical Diversion Squads (TDS). This commenter believes that DEA has not been proactive enough in its mission to address or prevent the opioid problem.

DEA Response: DEA works diligently to achieve operational efficiencies in all of its programs, including the DCP, while keeping costs as low as possible. Due to increased diversion and prescription drug abuse, as well as an increase in the production and use of chemicals that contribute to the health emergency, DEA's 360 Strategy, NTBI, and TDS groups are necessary tools to aid ending the deadly cycle of prescription opioid misuse.

Through DEA's 360 program, prescription opioid misuse is targeted using a holistic approach while leveraging enforcement resources. Given the number of opioid-related deaths, the coordinated and targeted enforcement efforts of federal, state, and local law enforcement are needed resources to help fight the epidemic. This epidemic is too massive for state and local governments to handle alone. The opioid epidemic is a national matter, which requires coordinated law enforcement, diversion control, and community outreach efforts, and which is aided by DEA's 360 Strategy initiative.

Before DEA began NTBI, most U.S. communities did not routinely offer opportunities to properly dispose of expired, unused, or unwanted pharmaceutical controlled substances. As a result, many people kept these drugs because they did not know how to dispose of them. In many cases, dispensed controlled pharmaceutical drugs remain in household medicine cabinets well after medication therapy has been completed, thus providing easy access to non-medical users for abuse or accidental ingestion. NTBI events have been overwhelmingly successful for over a decade, and have resulted in the collection and disposal of over 6,349 tons of pharmaceuticals. The huge volume of drugs must be transported for proper disposal. The assistance from local points of contact is necessary to pick up collected drugs for disposal in accordance with Federal and State environmental standards. The NTBI program is an example of the DCP's commitment to community outreach efforts and the need to properly dispose of unused and unwanted controlled substances. This collaborative effort between DEA and State and local law enforcement agencies is focused on removing potentially dangerous controlled pharmaceutical substances from our nation's medicine cabinets to reduce opportunities for diversion.

The TDS program has been a successful tool employed by the DCP to combat the illegal diversion of controlled substances. Combining the criminal drug investigative experience of DEA Special Agents, the subject matter expertise of Diversion Investigators (DIs), and the local knowledge and capabilities of deputized Task Force Officers, the TDSs can effectively confront the diversion problem on multiple levels. Since the initial deployment, TDSs have initiated an average of more than 1,500 cases and made more than 2,100 arrests per year.

The opioid epidemic is a national matter, which requires consistent coordinated law enforcement, diversion control, and community outreach efforts through DEA's 360, NTBI, and TDSs to represent the interests of the nation as a whole. Elimination of these programs would reduce the awareness of the opioid crisis, increase opportunities for diversion, and possibly result in a rise in opioid-related deaths.

Fee Calculation Methodology

Issue: The physician commenter believes that the methods described by the Agency that were used to come up with the fee increase seem arbitrary.

DEA Response: In developing this rule, DEA considered three methodologies to calculate registration and reregistration fees. DEA selected the current weighted-ratio option to calculate the new fees. This approach has been used since Congress established registrant fees and continues to be a reasonable reflection of differing costs. The registration fees under the weighted-ratio option result in differentiated fees among registrant groups, where registrants with generally larger revenues and costs pay higher fees than registrants with lower revenues and costs. Furthermore, the weighted-ratio does not create a disparity in the relative increase in fees from the current to the new fees. The weighted-ratios used by DEA to calculate the current fee have proven effective and reasonable over time, and generally reflect the differences in activity level, notably in inspections, scheduled investigations, and other control and monitoring, by registrant category (*i.e.,* these costs are higher for

manufacturers). DEA selected this option because it is the only option that resulted in ''reasonable'' fees for all registrant groups.

Fees for Registrant Categories

Issue: The pharmaceutical company objected to the increased registration fees, especially for small businesses. This commenter proposed two alternatives for assessing registration fees: Assessing fees based on the size of the business, or having registrants with a significant history of CSA violations pay higher registration fees. The commenter stated that in the first proposal, registration fees would be assessed based on the size of the business (*e.g.,* the number of employees, annual earnings, *etc.*). The commenter's second proposal requires registrants with a significant history of CSA violations to pay dramatically increased registration fees. The commenter believes that specific manufacturers and wholesale distributors contributed to the opioid epidemic by turning a blind eye to CSA laws and implementing regulations, and were lured by sales of opioid medications and profits over their responsibilities as DEA registrants.

DEA also received a comment from an association agreeing with the concern for imposing disproportionately higher fees on NTPs, but objecting because they believe distributors will not be paying their fair share under the proposed ''weighted ratio option.'' The comment states that the ''past-based option'' would lead to a 117 percent increase for distributors, as opposed to the lower 21 percent that is being proposed. In their view, practitioners under the current and proposed ''weighted ration option'' would be paying too much as compared to manufacturers and distributors. The association also included a suggestion to lower fees for physicians who comply with DEA regulations that impose an extra cost upon the registrants, such as the electronic prescribing of controlled substances (EPCS) or a waiver to prescribe buprenorphine. The association takes the position that if EPCS is supposed to reduce diversion, then DCP must be incurring lower costs for those who adopt EPCS. Similarly, they state that physicians trained to prescribe buprenorphine to treat opioid use disorder are lowering DCP costs by lowering the costs associated with drug addiction.

A company in support of the fee increase suggested that DEA eliminate the duplicative registration requirement. This company previously sent a letter to the Office of Legal Policy, U.S. Department of Justice, dated August 14, 2017, requesting that DEA amend the regulations to waive the chemical registration requirement for wholesale distributors who are also registered as controlled substance handlers. The company further stated that it is redundant, unnecessary, and unfair to make a single facility pay two registration fees. The company was specifically concerned that wholesale distributors that possess and distribute both controlled substances and certain iodine products must apply and pay registration fees for two separate registrations, even though they are storing and distributing these products at a single warehouse.

DEA Response: It is important to emphasize that the focus of DEA's fee calculation methodology is to account for DCP program costs among the registrant categories and not to set fees according to business size or quantities of controlled substances handled. DEA provided economic impact analysis demonstrating the relatively minor proportion of registrant's total income needed to pay a registration fee. Additionally, the analysis showed that the percentage fee increase is comparable to inflation.

DEA continues to review possible methodologies for differentiating fees between various registrant groups. However, at this time, DEA has determined that it is both practicable and reasonable to continue to apply the weighted-ratio methodology without distinction between small and large businesses.

Regarding using CSA violations as a factor in setting registration fees, DEA's statutory authority is to charge reasonable registration fees set at a level that ensures the recovery of the full costs of operating the various aspects of the DCP. As a practical matter, the vast majority of DEA registrants are in compliance with the CSA, and DEA works with any registrant who is not in full compliance with the CSA to bring that registrant into compliance. The CSA provides for mechanisms independent of the registration fee by which to exact financial penalties from registrants who violate the law. Registrants who violate the CSA may be subject to civil and criminal penalties, as well as forfeitures. 21 U.S.C. 841, 842, 843, 881. Additionally, DEA would move to suspend the registration of a person whose registration is inconsistent with the public interest.

As discussed in the NPRM and in the final rule, DEA examined three alternative methodologies to calculate registration and reregistration fees. DEA did not select the past-based option for two key reasons. First, the fee increase is disproportionately burdensome to a small number of registrants. Narcotic treatment program fees would increase by 856 percent, while the change for the remaining registrant groups would range from a decrease of 44 percent to an increase of 131 percent. DEA deemed this option unreasonable. Second, the past-based option is backward looking and implicitly assumes that the future will be similar to the past. DEA cannot assume that future workload will reflect past DEA work hour data. For example, DEA plans to conduct more scheduled investigations in accordance with the new scheduled investigation work plan. As a result, DEA has concluded that past data is not the best basis for the calculation of new fees. The selected methodology must be applied to all registrants. For example, DEA cannot only apply the past-based option to distributors.

DEA does not have access to practitioners' rates of EPCS use or buprenorphine prescribing rates. In fact, many states with prescription drug monitoring programs prohibit law enforcement entities from using prescribing data without specific, independent legal authority to do so (*e.g.,* a subpoena or warrant). Even so, DEA does not have the resources to calculate the rate of prescribing for each registrant or to personalize each registrant's registration fee. Additionally, allowing individualized calculations based on EPCS use, prescribing rates, business size, or type of patients served would introduce uncertainty and unpredictable fluctuations in the collection cycle, thereby jeopardizing the statutory mandate to recover the full costs of operating the DCP.

Purchasers and suppliers of controlled substances and listed chemicals are regulated under the CSA and are therefore subject to the registration and reregistration requirement and fees.[11] The CSA is Federal law and cannot be changed by DEA. DEA carries out the mandates of the CSA by preventing the diversion of controlled substances and listed chemicals into the illicit market, but does not have the authority to change Federal provisions. The commenter suggested that DEA eliminate the duplicative registration requirement for certain chemicals (*e.g.,* iodine). The CSA requires a separate registration for certain chemicals to prevent its diversion into the illicit market. Iodine is not identified as a listed chemical that is contained in a drug marketed or distributed lawfully in the U.S. under the Federal Food, Drug, and Cosmetic

[11] 21 U.S.C. 822(a)(1); 21 U.S.C. 833(b).

Act.[12] Furthermore, iodine may be used for non-research, illegitimate purposes, and is also used in the illicit manufacture of methamphetamine. DEA requires a separate registration for this chemical due to the high probability that it may be diverted to the clandestine manufacture of methamphetamine.

Extension of Implementation Due to Coronavirus Disease 2019 Public Health Emergency

Issue: Three commenters recommended deferring the proposed fee increase and one objected to its implementation due to the Coronavirus Disease (COVID–19) pandemic and the economic uncertainty that it has engendered. A pharmaceutical company suggested that DEA postpone the fee increases and the comment period at least until January 2021, and noted that publishing a proposed fee increase during a worldwide health pandemic with looming economic uncertainties was poorly timed, as the nation's current priority is to focus public health and safety measures on the COVID–19 pandemic. An association recommended that the fee increases be postponed until the conclusion of the public health emergency, stating that implementing the proposed 21 percent increase would be a heavy burden to pharmacists who are already struggling during this time, as the pandemic has led to a decrease in patient services and revenues. A third commenter, also an association, urged that DEA defer the registration fee increases for at least 12 months due to the COVID–19 pandemic and resulting economic recession, or until the business community has recovered.

A fourth commenter objected to the increase in practitioners' registration fees because physicians cannot afford to pay higher DEA registration and reregistration fees. It stated that Medicare payment rates are in the midst of a six-year freeze, and COVID–19 has led to steep declines in patient services and associated revenues, even for frontline physicians caring for patients with COVID–19, who may face a reduction in revenues from elective procedures and increased expenses due to new infection control processes and supplies.

DEA Response: DEA recognizes that industry is experiencing unique challenges, including financial challenges, during the current coronavirus pandemic. Protecting the health and safety of our communities is DEA's top priority, and that commitment has continued during the unprecedented public health emergency caused by the ongoing COVID–19 pandemic. During this emergency, DC is responding quickly and appropriately to ensure continued access to necessary controlled substances. DC's efforts include supporting prescribing practices that limit exposure, enabling uninterrupted access to practitioners, and safeguarding a consistent and reliable drug supply. Some of the ways DC continues to fulfill its mission and serve the American people during this challenging time include:

- Working with registrants to facilitate satellite hospitals and clinic locations;
- Temporarily lifting restrictions on DEA's ''five percent rule'';
- Temporarily raising aggregate production quotas for certain medications;
- Providing clear guidance on electronic prescribing of controlled substances;
- Allowing Narcotic Treatment Programs to sign invoices post delivery;
- Ensuring Narcotic Treatment Programs can get medication to their patients; and
- Supporting responsible use of telemedicine while providing medication assisted treatment.

These additional COVID–19-related responsibilities have put additional pressure on the DCP and its resource needs.

Moreover, DEA's scope of responsibilities has expanded due to Congressional mandates since the last fee schedule revision in 2012. DEA outlined the legal authority, the history of the fees, the need for an increase in fees, the methodology, and the proposed fee calculation in the NPRM to explain why there is a fee, why there is a periodic recalculation, and how the proposed new fee schedule was calculated. The registration fee is a statutory requirement for those seeking to participate in the closed system of distribution by handling, or having access to, controlled substances or List I chemicals. These fees fund the DCP, which includes providing and maintaining services to DEA registrants.

DEA is sensitive to the challenges facing many registrants and has endeavored to set the fee as low as possible, consistent with its statutory mandates, and has provided a 60-day comment period to solicit input from interested parties. DEA continuously strives to be fiscally responsible. The last fee increase was set in FY 2012, and was intended to encompass only FYs 2012–2014. Through various efforts and cost-saving measures, the DCP has been able to operate under that fee structure through FY 2020. While DEA is publishing this final rule at this current time, the increase will not immediately go into effect on the date of publication of this rule. The new fee schedule will be implemented for all new applications submitted on or after October 1, 2020, and for all renewal applications submitted on or after October 1, 2020. Thus, not all registrants will be paying registration and reregistration fees on October 1, 2020. Those whose reregistration fees are due between now and September 30, 2020, will continue to pay the current fees until their next date of renewal. As such, only a small subset of registrants will be affected when the rule is first implemented.

Without an adjustment in the annual registration fees, the DCP will be unable to continue current operations and will be in violation of the statutory mandate that fees ''shall be set at a level that ensures the recovery of the full costs of operating the various aspects of [the diversion control program.]'' 21 U.S.C. 886a(1)(C). Continued collections under the current fee schedule would require the DCP to significantly cut existing and planned DCP operations vital to its mission. DEA relies on the DCP to maintain the integrity of the closed system of distribution as outlined in the proposed rule, particularly at this time of increased abuse and diversion.

V. Provisions of the Final Rule

After careful consideration of all the comments, DEA is finalizing, without change, the fee schedule, and codifying existing practices of the issuance of refunds by DEA for applicant registration fees as proposed in the NPRM published on March 16, 2020. 85 FR 14810–14837.

Revised Fees

Based on thorough analysis of the identified fee calculation options—including the anticipated economic impact on registrants—DEA has determined that the weighed-ratio option represents the most reasonable approach to calculate registrant fees sufficient to fully fund the DCP.

The fee schedule replaces the current fee schedule for controlled substance and chemical registrants to recover the full costs of the DCP so it can continue to meet the programmatic responsibilities set forth by statute, Congress, and the President. As discussed, without an adjustment to fees, the DCP will be unable to continue current operations, necessitating dramatic program reductions, and possibly weakening the closed system of distribution. Accordingly, DEA finalizes

[12] 21 CFR 1300.02(1)(iv).

the following new fees for the FY 2021 to FY 2023 period.

TABLE 1—REGISTRATION AND REREGISTRATION FEES BY BUSINESS ACTIVITY

Business activity	Current fees ($)	New fees ($)	Difference ($)
*Registrants on Three Year Registration Cycle**			
Pharmacy	731	888	157
Hospital/Clinic	731	888	157
Practitioner	731	888	157
Teaching Institution	731	888	157
Mid-level Practitioner (MLP)	731	888	157
Registrants on Annual Registration Cycle:			
Manufacturer	3,047	3,699	652
Distributor	1,523	1,850	327
Researcher/Canine Handler	244	296	52
Analytical Lab	244	296	52
Importer	1,523	1,850	327
Exporter	1,523	1,850	327
Reverse Distributor	1,523	1,850	327
Narcotic Treatment Program	244	296	52
Chemical Manufacturer	3,047	3,699	652
Chemical Importer	1,523	1,850	327
Chemical Distributor	1,523	1,850	327
Chemical Exporter	1,523	1,850	327

* Pharmacy, hospital/clinic, practitioner, teaching institution, and mid-level practitioner registration fees are for a three-year period. This current three-year fee is $731. The revised fee for the three-year registration period is $888. The three-year difference is $157 or an annual difference of $52.

The fees are estimated to fund the full cost of the DCP—to include the increased programmatic and personnel requirements currently, or expected to be in place from FY 2021 to FY 2023, and have a FY 2023 end-of-year balance of at least $50 million.

TABLE 2—OVERVIEW OF DIVERSION CONTROL FEE ACCOUNT

	FY 2021 ($M)	FY 2022 ($M)	FY 2023 ($M)	3-Years combined ($M)
DCFA Balance Carried Forward From Prior Year	69	96	86	69
Total Collections	576	596	625	1,797
Treasury Amount	(15)	(15)	(15)	(45)
Other Collections (OGV, CMEA)	1	1	1	3
Net Collections	562	582	611	1,755
Total Obligations	555	613	670	1,838
Recoveries from Deobligations	(20)	(22)	(24)	(65)
Net Obligations	535	591	647	1,773
End of Year DCFA Balance	96	86	50	50

Refund of Registration Fees

DEA is amending 21 CFR 1301.13(e) and 1309.12(b) to codify existing practices of the issuance of refunds by DEA for applicant registration fees. Generally, registration fees are not refundable. This regulation was implemented when registration fees were nominal. With increased registration fees, DEA recognizes the need to issue refunds in limited circumstances. These provisions of the rule will give the DEA Administrator discretionary authority to refund registration fees in limited circumstances, such as: Applicant error, DEA error, and death of a registrant within the first year of the three-year registration cycle. Refunds will be issued for applicant error when there has been a duplicate payment for the same renewal, incorrect billing or incorrect transposing of credit card digits, payment for incorrect business activity, or when an applicant is fee-exempt. Refunds will be issued based on DEA error when DEA caused the error; for example, when DEA incorrectly advised that a new application was needed, or advised a registrant to submit payment for a wrong business activity. While these provisions will have no economic costs or benefits, DEA believes it is important to accurately codify existing practices.

VI. Need for a New Fee Calculation

As discussed in the NPRM, DEA last adjusted the fee schedule in March 2012, with collections beginning in April 2012.[13] This fee schedule was intended to cover the ''full costs'' of the DCP for FY 2012 through FY 2014, or October 1, 2011 through September 30, 2014. The DCP has continued to operate under this fee schedule by being fiscally responsible, optimizing its organizational structure, maximizing the use of technological enhancements, as

[13] 77 FR 15234, March 15, 2012.

well as unforeseen delays in hiring. As indicated by the above-referenced 2008 OIG report, the DCP has assumed a number of costs since the last fee increase, including indirect pay and rightsizing, additional salary, and other costs attributable to diversion control activities. In addition, Congress has expanded DCP's responsibility to address the opioid epidemic public health emergency. DEA's 360 Strategy was launched with the purpose of ending the deadly cycle of prescription opioid misuse through coordinated law enforcement, diversion control, and community outreach efforts.

Due to increased diversion and prescription drug abuse, as well as an increase in the production and use of chemicals that contribute to the opioid epidemic, the DCP has increased its use of TDS groups to meet its enforcement mission, and hired more DIs working in Diversion Groups (DG) and Diversion Staff (DS) across the nation to support its increased regulatory mission. In April 2012, DEA had 48 TDSs, 65 DGs and 17 DSs. At the end of FY 2019, DEA had 86 TDSs, 87, DG, 15 DSs, and 16 TDS-Extensions.[14]

The DCP continues to draw technical expertise from DIs, and the DCP has incorporated greater numbers of Special Agents, Chemists, Information Technology Specialists, Attorneys, Intelligence Research Specialists, and state and local personnel to meet its increased responsibilities. In April 2012, DEA had 1,167 employees in DCFA funded positions; at the end of FY 2019, DEA had 1,681. To continue to meet diversion control challenges and to staff and support the increased number of regulatory and enforcement groups, DEA must expand the DCP's enforcement and regulatory capacity, as well as its support functions. DEA plans to increase its full-time-equivalent (FTE) staffing level of 1,782 in FY 2020, DEA plans to increase FTEs by 90, 147, and 134, in FY 2021, FY 2022, and FY 2023, respectively, for a total of 2,153 FTEs in FY 2023. The estimated increase for the three year period is 371 FTEs.

DEA has been, and will continue to be fiscally responsible and seek to improve efficiencies and identify other cost saving measures. As discussed above, however, a new fee calculation is needed. Without an adjustment in the registration fees, DEA will be unable to continue current operations and will be in violation of the statutory mandate that fees charged ''shall be set at a level that ensures the recovery of the full costs of operating the various aspects of [the diversion control program].'' 21 U.S.C. 886a(1)(C). For example, collections under the current fee schedule will require the DCP to significantly cut existing and planned DCP operations vital to its mission. DEA relies on the DCP to maintain the integrity of the closed system for pharmaceutical controlled substances and listed chemicals, particularly at this time of dramatic increases in drug abuse and diversion.

Fee Calculation

As described above, DEA is delegated the task of determining the details of how to fulfill the statutory requirement to recover the full costs of operating the DCP and charging registrants reasonable fees relating to the registration and control ''of the manufacture, distribution, dispensing'' [15] and ''importers and exporters'' [16] of controlled substances and listed chemicals. In advance of actual expenditures, DEA must determine reasonable fees to be charged. To project the annual costs of the DCP, DEA uses historical data and projections, together with actual and current costs. Additionally, a reasonable fee must be calculated that will fully recover the costs of the DCP based on a variable number of registrants in the different categories of registration (*e.g.,* manufacturers, distributors, importers, exporters, reverse distributors, practitioners, and individual researchers). Because the fees collected must be available to fully fund the DCFA and to reimburse DEA for expenses incurred in the operation of the DCP (21 U.S.C. 886a), DEA must collect more than is actually spent to avoid running a deficit and being in violation of federal fiscal law.[17] In operating the DCP, DEA must be prepared for changes in investigative priorities, diversion trends, and emerging drugs or chemicals posing new threats to the public health and safety. By definition, it is an inexact effort. Consequently, the agency must select and follow a single methodology throughout any given fee cycle.

Since the inception of the fee, the agency has selected a weighted-ratio method to determine a reasonable fee for each category of registrants. Under this method, registrants are assigned to a business activity or category (*e.g.,* researcher, practitioner, distributor, manufacturer, *etc.*) based on the statutory fee categories, and the projected population is calculated for each category or business activity. Then, DEA estimates the full cost of the DCP for the analysis period, which is generally three years. The corresponding registration fees required to pay the full cost of the DCP for the analysis period are then calculated by employing a ratio of 1.0 for researchers, 3.0 for practitioners (for administrative convenience, the fee is collected every three years for practitioners), 6.25 for distributors, and 12.5 for manufacturers. These are long-established ratios, utilized in previous fee increases, and repeatedly determined to be reasonable.[18] By utilizing these different ratios, DEA recognizes the statutory need to charge reasonable fees relating to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals.

The current fees, some of which are paid annually, and some of which are paid every three years, range from $244 for ratio 1 to $3,047 for ratio 12.5, depending upon the particular registrant category. Practitioners, mid-level practitioners, dispensers, researchers, and narcotic treatment programs pay an annual registration fee of $244. For administrative convenience, both the collection and the payment, practitioners pay a combined registration fee of $731 every three years. Distributors, importers, and exporters pay an annual fee of $1,523, while manufacturers pay an annual fee of $3,047. 21 CFR 1301.13 and 1309.11.

Since the last fee schedule adjustment in March 2012,[19] DEA continued to review possible alternative methodologies to differentiate registration fees between various registration business activities. In developing this rule, DEA examined three alternative methodologies to calculate the registration and registration fees: Flat Fee Option, Past-Based Option, and Weighted-Ratio Option (current and selected method). In examining each alternative methodology, DEA considered whether the fee calculation (1) was reasonable, and (2) could fully fund the costs of operating the various aspects of the DCP. DEA has determined that the current ''weighted-ratio'' fee structure is the most reasonable. Therefore, DEA

[14] A TDS-Extension is an extension of a TDS into a location, usually staffed by two Special Agents to provided law enforcement coverage while not incurring the full cost of a TDS.

[15] 21 U.S.C. 821.

[16] 21 U.S.C. 958(f).

[17] In general, no officer or employee of the United States Government may make or authorize an expenditure or obligation in excess of an amount available in an appropriation or fund. 31 U.S.C. 1341.

[18] 77 FR 15234 (March 15, 2012); 71 FR 51105 (August 29, 2006).

[19] 77 FR 15234, March 15, 2012.

selected the current weighted-ratio method to calculate and differentiate fees between registrant groups. A detailed discussion of the alternatives is provided below. Additionally, the selected fee calculation method is summarized below and detailed in ''Proposed Registration Fee Schedule Calculation'' in the rulemaking docket at *https://www.regulations.gov.*

Projected Costs for the Diversion Control Program

In calculating fees to recover the mandated full costs of operating the DCP, DEA estimated the cost of operating the DCP for the next three fiscal years. To develop the DCFA budget request estimates for FY 2021 to FY 2023, DEA compiled: (1) The DCFA Budget for FY 2020, which forms a base spending level for the current level of service, (2) the estimated additional required funds for FY 2021 to FY 2023, and (3) the required annual $15 million transfer to the United States Treasury as mandated by the CSA (21 U.S.C. 886a). The following paragraphs explain the annual revenue calculations and how the total amount to be collected for the FY 2021 to FY 2023 period was calculated. In developing this figure, DEA began with annual projected DCP obligations, including payroll, operational expenses, and necessary equipment. The DCP budget has increased due to inflationary adjustments for rent and payroll, and adding staffing resources that support the regulatory and law enforcement activities of the program. The basis of current fees was to fund the DCP for the time period of FY 2012 to FY 2014, and the fees need to be adjusted to reflect these factors. Specific details on the DCP budget are available in the annual President's Budget Submission and supplemental budget justification documents provided to Congress. [20]

DEA must set fees to recover the full cost of the DCP. Therefore, the estimated budget for FY 2021 to FY 2023 forms the basis for required collections (target collections) from registration fees. The process for estimating the budget for each year is the same. Generally, the budget for a particular year is set by starting from the previous year (base year), adjusting for inflation, and then adding enhancements (growth) to the budget. DCP personnel growth is the key factor in formulating the budget.

The estimated budget is based on two estimated components: (1) Payroll obligations based on estimated FTEs, and (2) non-payroll obligations based on changes to payroll obligations. The estimated payroll obligations are based on the payroll cost of the FTEs described earlier. The estimates also account for the difference in payroll cost between personnel leaving the program, usually at a higher grade level, and personnel entering the program. Additionally, the payroll obligations include a yearly inflation factor of two percent to cover Within-Grade Increases, Career Ladders,[21] Cost of Living Adjustment, and increased benefits costs. Non-payroll obligations generally follow payroll obligations. As FTE and payroll obligations increase, non-payroll obligations increase accordingly. Non-payroll obligations include items such as rent, communications, utilities, services, equipment, travel, etc. [22] DEA believes its methodology supports the estimated budget for the three-year period, FY 2021 to FY 2023. The estimated payroll obligations and non-payroll obligations are added to obtain the estimated total obligations.

In April 2012, when the last fee increase was made effective, DEA had 48 TDSs, 65 DGs, and 17 DSs. At end of FY 2019, DEA had 86 TDSs, 87 DGs, 15 DSs, and 16 TDS-Extensions. To continue to meet diversion control challenges, DEA continues to increase its field regulatory and enforcement groups. DEA anticipates having 88 TDSs, 89 DGs, 17 DSs, and 14 TDS-Extensions by end of FY 2020 (beginning of FY 2021), expanding to 94 TDSs, 95 DGs, 10 DSs, and 10 TDS-Extensions by end of FY 2023. Table 3 summarizes the estimated number of field groups by year.

TABLE 3—NUMBER OF FIELD GROUPS BY YEAR

Regulatory and enforcement groups	As of 4/2012	Estimated EOY FY 2020	Estimated EOY FY 2023
TDS	48	88	94
DG	65	89	95
DS	17	13	10
TDS-Extension	.....	14	10

Additionally, in April 2012, DEA had 1,167 employees in DCFA funded positions; at the end of FY 2020, DEA will have an estimated 1,803 employees in such positions. To continue to meet diversion control challenges, and to staff and support the increased number of regulatory and enforcement groups described above, DEA plans to expand the DCP's enforcement and regulatory capacity, as well as its support functions. From an estimated FTE of 1,782 DEA plans to increase FTEs by 90, 147, and 134, in FY 2021, FY 2022, and FY 2023, respectively, for a total of 2,153 FTEs in FY 2023. The estimated increase for the three year period is 371 FTEs.

The estimated payroll obligations are based on the payroll cost of the FTEs described above. The estimates also account for the difference in payroll cost between personnel leaving the program, usually at higher grade level, and personnel entering the program. Additionally, the payroll obligations include a yearly inflation factor to cover Within-Grade Increases, Career Ladders,[23] Cost of Living Adjustment, and increased benefits costs. From an estimated base of $289,450,003 in FY 2020, estimated payroll obligations increase to an estimated $311,587,162, $344,462,812, and $376,513,554 in FY 2021, FY 2022, and FY 2023, respectively, reflecting the increase in FTEs.

Non-payroll obligations include items such as rent, communications, utilities,

[20] *See* this rulemaking docket found at *www.regulations.gov.*

[21] The position is structured to allow for entry at a lower grade level and allows for progression at predetermined GS-grade level (usually multi-level) interval to the full performance grade level.

[22] The full list of non-payroll obligations is available in the FY 2020 Congressional Budget Submission, Exhibits: Diversion Control Fee Account (DCFA). *https://www.justice.gov/doj/fy-2020-congressional-budget-submission.*

[23] Position structured to allow for entry at a lower grade level that allows for progression at predetermined GS-grade level (usually multi-level) interval to the full performance grade level.

services, equipment, travel, etc.[24] Non-payroll obligations generally follow payroll obligations. As FTE and payroll obligations increase, non-payroll obligations also increase. The year-over-year increases to payroll are 7.6 percent, 10.6 percent and 9.3 percent in FY 2021, 2022, and FY 2023, respectively. From an estimated base of $225,747,874 non-payroll obligations in FY 2020, increasing non-payroll obligations at the same rate as payroll obligations results in estimated non-payroll obligations of $243,013,089, $268,653,469, and $293,650,487 in FY 2021, FY 2022, and FY 2023, respectively.

TABLE 4—ESTIMATED TOTAL OBLIGATIONS

[Budget]

	FY 2020	FY 2021	FY 2022	FY 2023
Payroll Obligations ($)	289,450,003	311,587,162	344,462,812	376,513,554
Non-payroll Obligations ($)	225,747,874	243,013,089	268,653,469	293,650,487
Total Obligations ($)	515,197,876	554,600,250	613,116,281	670,164,040
FTE	1,782	1,872	2,019	2,153

In addition to the budget for each of the fiscal years, DEA also considers the cost components outlined below in determining required registration fee collections.

Recoveries From Money Not Spent as Planned (Deobligation of Prior Year Obligations)

At times, DEA enters into an obligation to purchase a product or service that is not delivered immediately, such as in a multi-year contract, or not at all. Changes in obligations can occur for a variety of reasons, (*i.e.,* changes in planned operations, delays in staffing, implementation of cost savings, changes in vendor capabilities, *etc.*). When DEA does not spend the obligated money as planned, that obligation is ''deobligated.'' The ''deobligated'' funds are ''recovered,'' and the funds become available for DCP use. Based on historical trends, the recovery of money not spent as planned (deobligation of prior year obligations) is estimated at 3.5 percent of obligations.

Payment to Treasury

In the 1993 appropriations for DEA, Congress determined that the DCP would be fully funded by registration fees and no longer by appropriations.[25] Congress established the DCFA as a separate account of the Treasury to ''ensure the recovery of the full costs of operating the various aspects of [the Diversion Control Program]'' by those participating in the closed system established by the CSA. 21 U.S.C. 886a(1)(C). Fees collected are deposited into a separate Treasury account. Each fiscal year, the first $15 million of collected fees is transferred to the Treasury and is not available for use by the DCP. Therefore, DEA needs to collect an additional $15 million per year beyond estimated costs for payment to the Treasury.

DCFA Balance

DEA maintains a DCFA balance, as working capital, to maintain DCP operations during low collection periods.[26] Monthly collections and obligations fluctuate throughout the year. There are times when obligations (*i.e.,* spending) exceed collections. This can happen consecutively for several months. Therefore, DEA maintains a DCFA balance to avoid operational disruptions due to these fluctuations. The estimated DCFA balance at beginning of FY 2021 is $69 million. Based on the history of these fluctuations, DEA has determined that an end-of-year DCFA balance of $50 million is adequate. Therefore, the target DCFA balance at the end of FY 2023 is $50 million.

Other Collections

DEA derives revenue from the sale/salvage of official government vehicles dedicated for use in the DCP. Additionally, under the Combat Methamphetamine Epidemic Act of 2005 (CMEA), DEA collects a self-certification fee of $21 for regulated sellers of scheduled listed chemical products. 21 CFR 1314.42(a). The fee is waived for any person holding a current DEA registration in good standing, such as a pharmacy authorized to dispense controlled substances. 21 CFR 1314.42(b). DEA's estimate for these other collections is $1 million per year.

Estimated Total Required Collections (Target Collections)

Based on the estimated total obligations and other financial components outlined above, DEA determined a 21 percent increase in total collections is required to fund the DCP for the three-year period and have a $50 million in DCFA balance at the end of FY 2023.

The target collections are $576 million, $596 million, and $624 million, for FY 2021, FY 2022, and FY 2023, respectively. In total, DEA needs to collect $1.8 billion (or $1,796 million) in registration fees over the three-year period, FY 2021 to FY 2023, to fully fund the DCP.

TABLE 5—ESTIMATED DCFA CASH FLOW UNDER NEW FEE CALCULATION

	FY 2021 ($M)	FY 2022 ($M)	FY 2023 ($M)	3-Years combined ($M)
DCFA Balance Carried Forward From Prior Year	69	95	86	69
Total Collections	576	596	624	1,796
Treasury Amount	(15)	(15)	(15)	(45)

[24] Full list of non-payroll obligations is available in the FY 2020 Congressional Budget Submission, Exhibits: Diversion Control Fee Account (DCFA). *https://www.justice.gov/doj/fy-2020-congressional-budget-submission.*

[25] Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1993, Public Law 102–395, codified in relevant part at 21 U.S.C. 886a.

[26] ''DCFA balance'' was called the ''Operational Continuity Fund (OCF)'' in the last fee schedule adjustment in March 2012.

TABLE 5—ESTIMATED DCFA CASH FLOW UNDER NEW FEE CALCULATION—Continued

	FY 2021 ($M)	FY 2022 ($M)	FY 2023 ($M)	3-Years combined ($M)
Other Collections (OGV, CMEA)	1	1	1	3
Net Collections	562	582	610	1,755
Total Obligations	555	613	670	1,838
Recoveries from Deobligations	(20)	(22)	(24)	(65)
Net Obligations	535	591	647	1,773
End of Year DCFA Balance	95	86	50	50

Note: This projection is based on the ''target'' collections for the purposes of calculated fees. To end with exactly $50 million DCFA Balance, the calculated fees will need to have many decimal places. When fees are rounded to the nearest whole dollar, the projected cash flow will vary slightly.

Without a fee increase, under current fee structure, the estimated collection is $474 million, $491 million, and $514 million, for FY 2021, FY 2022, and FY 2023, respectively, for a total of $1.5 billion (or $1,479 million) for the three-year period. Without a fee increase, DEA would have obligations that would exceed the collections and DCFA balance beginning in FY 2021.

TABLE 6—ESTIMATED DCFA CASH FLOW UNDER CURRENT FEE STRUCTURE

[If no actions are taken to reduce obligations *]

	FY 2021 ($M)	FY 2022 ($M)	FY 2023 ($M)	3-Years combined ($M)
DCFA Balance Carried Forward From Prior Year	69	(6)	(121)	69
Total Collections (at Current Fee)	474	491	514	1,479
Treasury Amount	(15)	(15)	(15)	(45)
Other Collections (OGV, CMEA)	1	1	1	3
Net Collections	460	477	500	1,437
Total Obligations	555	613	670	1,838
Recoveries from Deobligations	(20)	(22)	(24)	(65)
Net Obligations	535	591	647	1,773
End of Year DCFA Balance	(6)	(121)	(267)	(267)

* This is a hypothetical scenario. DEA would not allow DCFA balance to go negative.

Selected Methodology for New Fee Calculation

As shown in Table 5 above, the target collections are $576 million, $596 million, and $624 million, for FY 2021, FY 2022, and FY 2023, respectively. In total, DEA needs to collect $1.8 billion in registration fees over the three-year period, FY 2021 to FY 2023, to fully fund the DCP. DEA must select a method for determining fees for various business activities that would generate the target collections.

In developing this rule, DEA examined alternative methodologies to calculate the registration and reregistration fees in light of its statutory obligations under the CSA. First, pursuant to statute, DEA is authorized to charge *reasonable fees* relating to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals. 21 U.S.C. 821 and 958(f). Second, DEA must set fees at a level that ensures the recovery of the full costs of operating the various aspects of its DCP. 21 U.S.C. 886a. Accordingly, in examining each alternative methodology, DEA considered whether the fee calculation (1) was reasonable and (2) could fully fund the costs of operating the various aspects of the DCP.

Moreover, the CSA requires that DEA charge fees to fully fund the DCP, but that the fees collected by DEA are to be expended through the budget process only. Specifically, each year, DEA is required by statute to transfer the first $15 million of fee revenues into the general fund of the Treasury, while the remainder of the fee revenues is deposited into a separate fund of the Treasury called the DCFA. 21 U.S.C. 886a(1). On at least a quarterly basis, the Secretary of the Treasury is required to refund DEA an amount from the DCFA ''in accordance with estimates made in the budget request of the Attorney General for those fiscal years'' for the operation of the DCP. 21 U.S.C. 886a(1)(B) and (D).

In developing this rule, DEA considered three methodologies to calculate registration and reregistration fees: Flat Fee Option, Past-Based Option, and Weighted-Ratio Option (current and selected method). While the fee increases may be passed down to the registrants' customers, the analysis below assumes they are absorbed fully by the registrants.

For each of the alternatives, the calculated fees are analyzed for reasonableness by examining: (1) The absolute amount of the fee increase, (2) the change in fee as a percentage of revenue from 2012–2021, and (3) the relative fee increase across registrant groups. Additionally, each calculation methodology is re-evaluated for its overall strengths and weaknesses.

Flat Fee Option

Option 1 is called the Flat Fee Option. The flat fee option would provide equal fees across all registrant groups,

regardless of the proportion of DCP costs and resources the registrant group may require (*e.g.,* investigation resources). The fee calculation is straightforward: The total amount needed to be collected over the three-year period is divided by the total number of registration fee transactions over the three year period, adjusting for registrants on a three year registration cycle (so that the fees for a three-year period are three times the annual fee).

DEA calculated the annual registration fees under Option 1 and compared these fees to the current fees.

TABLE 7—REGISTRATION FEES UNDER FLAT FEE OPTION

Business activity	Current fees ($)	Option 1: flat fee ($)	Difference ($)	Increase over current (%)
*Registrants on Three Year Registration Cycle *:*				
Pharmacy	731	896	165	23
Hospital/Clinic	731	896	165	23
Practitioner	731	896	165	23
Teaching Institution	731	896	165	23
Mid-level Practitioner (MLP)	731	896	165	23
Registrants on Annual Registration Cycle:				
Manufacturer	3,047	299	(2,748)	−90
Distributor	1,523	299	(1,224)	−80
Researcher/Canine Handler	244	299	55	23
Analytical Lab	244	299	55	23
Importer	1,523	299	(1,224)	−80
Exporter	1,523	299	(1,224)	−80
Reverse Distributor	1,523	299	(1,224)	−80
Narcotic Treatment Program	244	299	55	23
Chemical Manufacturer	3,047	299	(2,748)	−90
Chemical Importer	1,523	299	(1,224)	−80
Chemical Distributor	1,523	299	(1,224)	−80
Chemical Exporter	1,523	299	(1,224)	−80

* Pharmacies, hospitals/clinics, practitioners, teaching institutions, and mid-level practitioners currently pay a fee for a three-year period. This current three-year fee is $731. The fee under the flat fee scenario for the three year registration period would be $896. The three-year difference is $165 or an annual difference of $55.

In the flat fee option, the registration fee for practitioners increases by 23 percent to $299 on an annual basis. The registration fees for manufacturers and distributors are reduced significantly, from $3,047 for manufacturers and $1,523 for distributors to $299 for both. This reduction represents a 90 percent and 80 percent reduction for manufacturers and distributors, respectively.

The calculation considered in Option 1 results in a disparity in fee change among registrant groups. For each registrant group to pay the same flat fee, the registration fee for practitioners increases by 23 percent, while registration fees for manufacturers and distributors decrease 90 percent and 80 percent, respectively.

The flat fee option has positive and negative aspects. The calculation is simple and straight-forward. The fee that DEA is required to charge registrants is based on a statutory requirement—it is not a user fee. A user fee calculation would require a calculation of the direct and indirect costs associated with each registrant group, and set fees to recover the costs associated with each group. Because the registration fee is not a user fee, DEA is not required to calculate fees according to the regulatory and enforcement costs associated with each registrant group. However, general historical costs of regulatory and enforcement activities support different fees among the categories. DEA believes that setting the same fees for all registrants, from multi-national corporations to mid-level practitioners, is unreasonable.

Conclusion for Flat Fee Option

After consideration of the flat fee option, DEA did not select this option to calculate the new fees. The fee disparity among registrant groups caused by this calculation alternative is too great. Under this option, the calculation would result in reduced fees for manufacturers and distributors by 90 percent and 80 percent respectively, while practitioner fees would increase by 23 percent. Setting the fees at the same level across all registrant groups is therefore not ''reasonable'' as required by statute. While the vast majority of registrants are practitioners, such as individual physicians and nurse practitioners, DEA registrants also include some of the largest corporations in the world. To satisfy the ''reasonable'' standard, registration fees should be different among the categories to account for cost and economic differences among the registrant categories. Option 1 did not satisfy this requirement.

Past-Based Option

Option 2 is called the Past-Based Option, and uses historic investigative work hour data to apportion the cost to each registrant category. In considering Option 2, DEA used historic investigative work hour data from FY 2016–FY 2018. DEA's records provide an accurate apportionment of work hours for certain types of diversion control activities (*e.g.,* investigations) among different classes of registrants. DEA estimates that approximately three percent of costs can be directly linked to pre-registration and scheduled investigations. Although some criminal investigations can be attributed to registrant groups, DEA did not include the cost of criminal investigations for the fee calculation under the Past-Based Option due to the unpredictable nature of this investigations. While DEA develops annual work plans for the number of scheduled investigations by registrant type, DEA does not develop such plans for criminal investigations. Therefore, the cost of criminal investigations is allocated equally across all registrant groups, regardless of business activity. The remaining costs associated with DCP activities and components benefit all registrants (*e.g.,* policy, registration, and legal activities); however, DEA records cannot attribute these costs by registrant class. Under

Option 2, pre-registration and scheduled investigation costs are assigned to registrant classes and all other costs are recovered on an equal, per-registrant basis.

DEA calculated the annual registration fees under Option 2 and compared these fees to the current fees. Although distributors and importers/exporters are in the same fee class in the current fee structure (Weighted-Ratio Option), in this analysis, distributors are separated from importers and exporters based on the available historic work hour data and reported work hours by type of registrant.

TABLE 8—REGISTRATION FEES UNDER PAST-BASED OPTION

Business activity	Current fees ($)	Option 2: Past-Based ($)	Difference ($)	% Increase over current (%)
Registrants on Three Year Registration Cycle:				
Pharmacy	731	1,030	299	41
Hospital/Clinic	731	872	141	19
Practitioner	731	873	142	19
Teaching Institution	731	1,694	963	132
Mid-level Practitioner (MLP)	731	868	137	19
Registrants on Annual Registration Cycle:				
Manufacturer	3,047	4,212	1,165	38
Distributor	1,523	3,303	1,780	117
Researcher/Canine Handler	244	565	321	132
Analytical Lab	244	565	321	132
Importer	1,523	1,906	383	25
Exporter	1,523	1,906	383	25
Reverse Distributor	1,523	3,303	1,780	117
Narcotic Treatment Program	244	2,332	2,088	856
Chemical Manufacturer	3,047	1,703	(1,344)	−44
Chemical Importer	1,523	1,386	(137)	−9
Chemical Distributor	1,523	1,824	301	20
Chemical Exporter	1,523	1,386	(137)	−9

In the Past-Based option, the percent change in fees from current fees ranges from negative 44 percent (reduction of 44 percent) for list I chemical manufacturers to an increase of 856 percent for narcotic treatment programs. The increase for a large majority of registrations, practitioners, mid-level practitioners, and hospital/clinics, is 19 percent.

While Option 2 is based on accurate historical data, it does not allow for future needs, demands, and shifting responsibilities of the DCP, including Agency priorities, new legislation, control of substances, new investigative requirements, and other program needs.

Conclusion for Past-Based Option

DEA did not select the Past-Based option for two key reasons. First, the fee increase is disproportionately burdensome to a small number of registrants. Narcotic treatment program fees would increase by 856 percent, while the change for the remaining registrant groups range from a decrease of 44 percent to an increase of 131 percent. DEA deemed this unreasonable. Second, the Past-Based option is backward looking and implicitly assumes that the future will be similar to the past. DEA cannot assume that future workload will reflect past DEA work hour data. For example, DEA plans to conduct more scheduled investigations in accordance with the new scheduled investigation work plan. As a result, DEA has concluded that past data is not a reasonable basis for the calculation of new fees.

Weighted-Ratio Option (Current and Selected Method)

The Weighted-Ratio Option has been used since the inception of the fee. This option distinguishes among the categories to establish a ''reasonable'' fee for each category. In this option, fees are assigned to different registrant categories based on DEA's general historical cost data expressed as weighted ratios. The different fees are expressed in ratios: 1.0 for researchers, canine handlers, analytical labs, and narcotics treatment programs; 3.0 for registrants on three-year registration cycles, pharmacies, hospitals/clinics, practitioners, teaching institutions, and mid-level practitioners; 6.25 for distributors and importers/exporters; and 12.5 for manufacturers. The adopted ratios are applied for administrative convenience because historically costs vary and a fee must be set in advance. To determine the fee, the amount needed to be collected over the FY 2021 to FY 2023 period is divided by the weighted number of estimated registrations.

TABLE 9—REGISTRATION FEES UNDER WEIGHTED-RATIO OPTION

Business activity	Current fees ($)	Option 3: Weighted Ratio ($)	Difference ($)	Increase over current (%)
Registrations on Three Year Registration Cycle: *				
Pharmacy	731	888	157	21
Hospital/Clinic	731	888	157	21
Practitioner	731	888	157	21
Teaching Institution	731	888	157	21
Mid-level Practitioner (MLP)	731	888	157	21

TABLE 9—REGISTRATION FEES UNDER WEIGHTED-RATIO OPTION—Continued

Business activity	Current fees ($)	Option 3: Weighted Ratio ($)	Difference ($)	Increase over current (%)
Registrations on Annual Registration Cycle:				
Manufacturer	3,047	3,699	652	21
Distributor	1,523	1,850	327	21
Researcher/Canine Handler	244	296	52	21
Analytical Lab	244	296	52	21
Importer	1,523	1,850	327	21
Exporter	1,523	1,850	327	21
Reverse Distributor	1,523	1,850	327	21
Narcotic Treatment Program	244	296	52	21
Chemical Manufacturer	3,047	3,699	652	21
Chemical Importer	1,523	1,850	327	21
Chemical Distributor	1,523	1,850	327	21
Chemical Exporter	1,523	1,850	327	21

* Pharmacies, hospitals/clinics, practitioners, teaching institutions, and mid-level practitioners currently pay a fee for a three-year period. This current three-year fee is $731. The fee under the weighted-ratio scenario for the three-year registration period would be $888. The three-year difference is $157, or an annual difference of $52.

In the Weighted-Ratio Option, the registration fees for all registrant groups increase by 21 percent from current fees, although the absolute dollar amount may differ. The registration fees range from $296 annually (or annual equivalent) to $3,699, and a corresponding increase of $52 annually (or annual equivalent) to $652. Registration fees are collected by location and by registered business activity. Registration fees for all registrant groups increase by 21 percent, and as a result, there is no disparity in the percentage fee increase among registrant groups. Furthermore, a 21 percent increase ($731 to $888) over nine years, from FY 2012 to FY 2021, equates to a 2.2 percent annual rate (on a compound annual growth rate basis), which is comparable to the rate of inflation. The same increase equates to a 1.8 percent annual rate over 11 years, from FY 2012 to FY 2023.

The Weighted-Ratio methodology, much like the flat fee, is straightforward and easy to understand, but unlike the flat fee, it applies historic weighted ratios to differentiate fees among registrant groups. This methodology has the advantage of differentiating fees based on historic weighted ratios, but does not create a disproportionate fee increase in any registrant group.

Conclusion for Weighted-Ratio Option

DEA selected this option to calculate the new fees. This approach has been used since Congress established registrant fees and continues to be a reasonable reflection of differing costs. The registration fees under the Weighted-Ratio option result in differentiated fees among registrant groups, where registrants with generally larger revenues and costs pay higher fees than registrants with lower revenues and costs. Furthermore, the Weighted-Ratio option does not create a disparity in the relative increase in fees from the current to the new fees. The weighted-ratios used by DEA to calculate the current fee have proven effective and reasonable over time, and generally reflects the differences in activity level, notably in inspections, scheduled investigations, and other control and monitoring, by registrant category (*i.e.,* these costs are higher for manufacturers). DEA selected this option because it is the only option that resulted in ''reasonable'' fees for all registrant groups.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule has been developed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, public health and safety, and environmental advantages, distributive impacts, and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. The Executive Order classifies a ''significant regulatory action'' requiring review by OMB as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

DEA estimates that this rule will have an annual effect, in the form of transfers, on the economy of $100 million or more and, therefore, is an economically significant regulatory action. Fees paid to DEA are considered transfer payments and not costs.[27] The analysis of benefits and transfers is below. The OMB's Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under the meaning of E.O. 12866, and it therefore has been reviewed by the OMB.

a. Need for the Rule

Under the CSA, DEA is authorized to charge reasonable fees relating to the registration and control of the manufacture, distribution, dispensing, import, and export of controlled substances and listed chemicals. 21 U.S.C. 821 and 958(f). DEA must set fees at a level that ensures the recovery of the full costs of operating the various aspects of the DCP. 21 U.S.C. 886a(1)(C).

[27] OMB Circular A–4.

DEA continually monitors the anticipated budget and collections to determine whether the registration fees need to be adjusted. DEA has determined that the fees need to increase in beginning October 1, 2020, FY 2021, to the amounts indicated above in order to fully fund the DCP as required by statute. Therefore, this rulemaking is required for DEA to recover the full costs of operating the DCP.

b. Alternative Approaches

As described in detail above, DEA examined three alternative methodologies to calculate the registration and registration fees: Flat Fee Option, Past-Based Option, and Weighted-Ratio Option (current and selected method).

For each of the alternatives considered, the calculated fees are analyzed for reasonableness by examining: (1) The absolute amount of the fee increase; (2) the change in fee as a percentage of revenue from 2012 to 2021; and (3) the relative fee increase across registrant groups. Additionally, each calculation methodology is re-evaluated for its overall strengths and weaknesses.

Flat Fee Option

Option one is called the Flat Fee Option. The flat fee option would provide equal fees across all registrant groups, regardless of the proportion of DCP costs and resources the registrant group may require (*e.g.,* investigation resources). The calculation results in a dramatic disparity in fee change among registrant groups. After consideration of the flat fee option, DEA did not select this option to calculate the new fees. The fee disparity among registrant groups caused by this calculation alternative is too great. Under this option, the practitioner fees would increase by 23 percent to $299 on an annual basis, while manufacturer and distributor fees would decrease by 90 percent and 80 percent respectively, to an annual fee of $299. Setting the fees at the same level across all registrant groups is therefore not ''reasonable'' as required by statute. While the vast majority of registrants are practitioners, such as individual physicians and nurse practitioners, DEA registrants also include some of the largest corporations in the world. To satisfy the ''reasonable'' standard, registration fees should be different among the categories to account for cost and economic differences among the registrant categories. This option did not satisfy this requirement.

Past-Based Option

Option two is called the Past-Based Option, and uses historic investigative work hour data to apportion the cost to each registrant category. Under Option two, pre-registration and scheduled investigation costs are assigned to registrant classes and all other costs are recovered on an equal, per-registrant basis. In the Past-Based option, the percent change in fees from current fees ranges from negative 44 percent (reduction of 44 percent) for list I chemical manufacturers to an increase of 856 percent for narcotic treatment programs. The increase for a large majority of registrations, practitioners, mid-level practitioners, and hospital/clinics, is 19 percent. DEA did not select the Past-Based option for two key reasons. First, the fee increase is disproportionately burdensome to a small number of registrants. Narcotic treatment program fees would increase by 856 percent, while the change for the remaining registrant groups range from a decrease of 44 percent to an increase of 131 percent. DEA deemed this unreasonable. Second, the Past-Based option is backward looking and implicitly assumes that the future will be similar to the past. The past may not necessarily be a bad estimate. However, DEA develops a work plan for scheduled investigations annually and investigation frequency may be modified based on need or diversion risk. DEA cannot assume that future workload will reflect past DEA work hour data. As a result, DEA has concluded that past data is not a reasonable basis for the calculation of new fees.

Weighted-Ratio Option (Current and Selected Method)

The Weighted-Ratio Option has been used since the inception of the fee. This option distinguishes among the categories to establish a ''reasonable'' fee for each category. In this option, fees are assigned to different registrant categories based on DEA's general historical cost data expressed as weighted-ratios. The Weighted-Ratio methodology, much like the flat fee, is straightforward and easy to understand, but unlike the flat fee, it applies historic weighted ratios to differentiate fees among registrant groups. This method would result in across-the-board 21 percent increase in fees for all registrations.

DEA selected this option to calculate the new fees. This approach has been used since Congress established registrant fees and continues to be a reasonable reflection of differing costs. The registration fees under the Weighted-Ratio option result in differentiated fees among registrant groups, where registrants with generally larger revenues and costs pay higher fees than registrants with lower revenues and costs. Furthermore, the Weighted-Ratio option does not create a disparity in the relative increase in fees from the current to the new fees. The weighted-ratios used by DEA to calculate the current fee have proven effective and reasonable over time, and generally reflects the differences in activity level, notably in inspections, scheduled investigations, and other control and monitoring, by registrant category (*i.e.,* these costs are higher for manufacturers). DEA selected this option because it is the only option that resulted in ''reasonable'' fees for all registrant groups.

c. Summary of Impact of New Fees Relative to Current Fees

Affected Entities

As of September 2019, DEA issued 1,840,501 issued controlled substances and chemical registrations (1,839,556 controlled substances registrations and 945 chemical registrations), as shown in Table 10.

TABLE 10—NUMBER OF REGISTRATIONS BY BUSINESS ACTIVITY

[September 2019]

Registrant class/business	Controlled substances	Chemicals
Pharmacy	70,851	
Hospital/Clinic	18,305	
Practitioner	1,324,438	
Teaching Institute	264	
Mid-Level Practitioner	408,468	

TABLE 10—NUMBER OF REGISTRATIONS BY BUSINESS ACTIVITY—Continued

[September 2019]

Registrant class/business	Controlled substances	Chemicals
Researcher	11,986	.....
Analytical Labs	1,514	.....
Narcotic Treatment Program	1,738	.....
Manufacturer	570	207
Distributor	843	370
Reverse Distributor	68	.....
Importer	253	209
Exporter	258	159
Total	1,839,556	945
Grand total (all registrations)	1,840,501	

* Includes fee-paying and fee-exempt registrations.

Not all registrants listed in Table 10 are subject to the fees. Any hospital or other institution operated by an agency of the U.S. of any state, or any political subdivision of an agency thereof, is exempt from the payment of registration fees. Likewise, an individual who is required to obtain a registration in order to carry out his/her duties as an official of a federal or state agency is also exempt from registration fees.[28] Fee-exempt registrants are not affected by the new fees.

Based on historical registration data and estimated growth trends, DEA estimates the average total registration population over the three-year period, FY 2021 to FY 2023, will be 2,004,358 as shown in Table 11. Estimated annual growth in fee-paying registrations is approximately 3.8 percent. The largest growth is in the MLPs. Approximately eight percent of all registrations are fee-exempt.

TABLE 11—ESTIMATED AVERAGE FEE-PAYING REGISTRATIONS, FY 2021–FY 2023

Registrant class/business	Controlled substances	Chemicals
Pharmacy	80,199	.....
Hospital/Clinic	16,638	.....
Practitioner	1,356,876	.....
Teaching Institute	130	.....
Mid-Level Practitioner	539,899	.....
Researcher	5,038	.....
Analytical Labs	908	.....
Narcotic Treatment Program	1,978	.....
Manufacturer	578	208
Distributor	666	329
Reverse Distributor	73	.....
Importer	222	202
Exporter	264	150
Total	2,003,469	889
Grand total (all registrations)	2,004,358	

The CSA requires a separate registration for each location where controlled substances are handled, and a separate registration for each business activity—that is, a registration for activities related to the handling of controlled substances, and a registration for activities related to the handling of list I chemicals. Some registrants may conduct multiple activities under a single registration (*e.g.,* manufacturers may distribute substances they have manufactured without being registered as a distributor), but firms may hold multiple registrations for a single location. Individual practitioners who prescribe, but do not store controlled substances, may use a single registration at multiple locations within a state, but need separate registrations for each state in which they practice and are authorized to dispense controlled substances. Firms with multiple locations must have separate registrations for each location.

Characteristics of Entities

This rule affects those manufacturers, distributors, dispensers, importers, and exporters of controlled substances and list I chemicals that are required to obtain and pay a registration fee with DEA pursuant to the CSA. As of September 2019, DEA issued 1,840,501 total controlled substances and chemical registrations (1,839,556 controlled substances registrations and 945 chemical registrations), as shown above in Table 10. DEA estimates an average total fee-paying population of 2,004,358 over the three-year period, FY 2021 to FY 2023, as shown in Table 11.

The registrations on a three-year cycle (*i.e.,* pharmacies, hospitals/clinics, practitioners, teaching institutions, and

[28] *See* 21 CFR 1301.21 for complete fee exemption requirements.

mid-level practitioners), make up 99.5 percent of all registrations not exempt from paying registration applications fees. All other categories of registration (*i.e.,* manufacturers, distributors, reverse distributors, importers, exporters, chemical manufacturers, chemical distributors, chemical importers, and chemical exporters) maintain an annual registration. Registration and reregistration costs vary by registrant category as is described in more detail in the sections below.

The new fees would affect a wide variety of entities. Table 12 indicates the sectors, as defined by the North American Industry Classification System (NAICS), affected by the rule and their enterprise average annual revenue, provided by the U.S. Census Bureau, Statistics of U.S. Businesses (SUSB). Most DEA registrants are, or are employed by, small entities under Small Business Administration (SBA) standards.

TABLE 12—INDUSTRIAL SECTORS OF DEA REGISTRANTS

Business activity	NAICS code	NAICS code description	Average annual revenue ($)
Manufacturer	325411	Medicinal and Botanical Manufacturing	33,905,094
	325412	Pharmaceutical Preparation Manufacturing	148,265,482
Distributor, Importer, Exporter	424210	Drugs and Druggists' Sundries Merchant Wholesalers	103,097,459
Reverse Distributor	5621	Waste Collection	5,168,825
	5622	Waste Treatment and Disposal	11,553,838
Pharmacy	445110	Supermarkets and Other Grocery (except Convenience) Stores	12,740,365
	446110	Pharmacies and Drug Stores	12,533,279
	*452210	Department Stores	2,899,338,610
	*452311	Warehouse Clubs and Supercenters	13,159,528,688
Analytical Labs	541380	Testing Laboratories	3,031,746
Teaching institute	611310	Colleges, Universities and Professional Schools	97,657,501
Researcher	*541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).	11,331,597
Canine Handler	561612	Security Guards and Patrol Services	3,740,383
Practitioner, Mid-level Practitioner,** Narcotic Treatment Program, Hospital/Clinic.	541940	Veterinary Services	1,067,601
	621111	Offices of Physicians (except Mental Health Specialists)	2,299,354
	621112	Offices of Physicians, Mental Health Specialists	476,408
	621210	Offices of Dentists	836,911
	621330	Offices of Mental Health Practitioners (except Physicians)	393,471
	621391	Offices of Podiatrists	550,257
	621420	Outpatient Mental Health and Substance Abuse Centers	2,982,804
	621491	HMO Medical Centers	68,506,712
	621493	Freestanding Ambulatory Surgical and Emergency Centers	5,844,323
	622110	General Medical and Surgical Hospitals	284,660,783
	622210	Psychiatric and Substance Abuse Hospitals	48,476,596
	622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	97,844,233
Chemical Manufacturer	325	Chemical Manufacturing	80,834,558
Chemical Distributor, Chemical Importer, Chemical Exporter.	424690	Other Chemical and Allied Products Merchant Wholesalers	26,492,119

Source: SUSB, 2012 SUSB Annual Datasets by Establishment Industry. (latest available) *https://www.census.gov/data/datasets/2012/econ/susb/2012-susb.html* (accessed 10/5/2019).
*NAICS code was updated in the 2017 NAICS. The annual revenue figures for these industries are based on corresponding 2012 SUSB industry data.
** Practitioners and mid-level practitioners are generally employed in one of these industries.

Additionally, while many practitioner and mid-level practitioner registration application fees may be paid by the employer, some may pay out-of-pocket. Table 13 indicates the labor categories and average annual wages, as provided by the U.S. Department of Labor, Bureau of Labor Statistics (BLS), affected by the rule.

TABLE 13—LABOR CATEGORIES OF DEA REGISTRANTS

Occupation code	Occupation title	Annual mean wage ($)
29–1021	Dentists, General	175,840
29–1060	Physicians and Surgeons	210,980
29–1071	Physician Assistants	108,430
29–1171	Nurse Practitioners	110,030

Source: BLS, May 2018 National Occupational Employment and Wage Estimates, United States. *https://www.bls.gov/oes/current/oes_nat.htm* (accessed 10/5/2019).

The listing of industry sectors and labor categories in Tables 12 and 13 are not intended to be exhaustive, but to generally represent DEA registrants.

Economic Impact Analysis of New Fee

The new fees are expected to have two levels of impact. Initially, the fee increase will impact the registrants. Then, the fee increase, or portion of the fee increase, is expected to be eventually passed on to the general public. To be analytically conservative, the analysis below assumes that the impact of the fee increase is absorbed entirely by the registrants.

DEA assumes that the registration fees are business expenses for all registrants. As a result, the increase in registration fees may result in reduced tax liability, which may diminish the impact of the increase. For example, if a practitioner pays an additional $52 per year in registration fees, and the combined federal and state income tax is 35 percent, the net cash impact is $34, not $52. The additional expense of $52

causes income/profit to decrease by $52, decreasing the tax liability by $18. The net cash outlay is $34.[29] However, to be analytically conservative, the analysis does not consider the impact of reduced tax liability.

As individual practitioners and small businesses are expected to experience the greatest impact, DEA examined the new fees as a percentage of income for physicians, dentists, physician assistants, nurse practitioners, and small businesses. Physicians, dentists, physician assistants, and nurse practitioners reflect a representative sub-group of the practitioner and mid-level practitioner registrant groups. The new fee for practitioners and mid-level practitioners of $888 per three years represents a $157 increase over the current fee of $731 per three years. The annual increase is $52, representing 0.025 percent, 0.030 percent, 0.048 percent, and 0.048 percent of average annual income for physicians, dentists, physician assistants, and nurse practitioners, respectively. Table 14 indicates the annual effect as a percentage of income. The impact on small businesses is discussed in the Regulatory Flexibility Act section.

TABLE 14—FEE INCREASE AS PERCENTAGE OF ANNUAL MEAN WAGE

Occupation code	Occupation title	Annual mean wage ($)	Annual fee increase of annual mean wage (%)
29–1060	Physicians and Surgeons	210,980	0.025
29–1021	Dentists, General	175,840	0.030
29–1071	Physician Assistants	108,430	0.048
29–1171	Nurse Practitioners	110,030	0.048

Additionally, the impact of the fee increase is also diminished by an estimated increase in registrant income. The table below describes the annual-equivalent fee as a percentage of income in 2012, the year of the last fee increase, and 2021. This analysis assumes that the fee increase is absorbed personally by each practitioner or mid-level practitioner. In 2012, the new fee of $244 (on an annual basis) represented approximately 0.15 percent, 0.13 percent, 0.26 percent, and 0.27 percent of annual income for dentists, physicians, physician assistants, and nurse practitioners, respectively. While the new fees are 21 percent above the current fees implemented in 2012, the average incomes for dentists, physicians, physician assistants, and nurse practitioners increased an average 12 percent, 17 percent, 26 percent, and 30 percent, respectively, since that time.[30] This estimated increase in average income lessens the impact of the fee increase as a percentage of average income. The new fees are estimated to represent approximately 0.16 percent, 0.13 percent, 0.25 percent, and 0.25 percent of annual income for dentists, physicians, physician assistants, and nurse practitioners, respectively. Furthermore, a 21 percent increase ($731 to $888) over nine years, from FY 2012 to FY 2021, equates to a 2.2 percent annual rate (on compound annual growth rate basis), which is comparable to the rate of inflation. The same increase equates to a 1.8 percent annual rate over 11 years, from FY 2012 to FY 2023. This analysis ignores the dampening effect of registration fees as a business expense and the potential that the fee increase might be passed on to customers. Table 15 represents fees as percentage of average income.

TABLE 15—FEES AS PERCENTAGE OF ANNUAL MEAN WAGE IN 2012 AND 2021

Occupation title	2012			2018	2021		
	Annual mean wage ($)	Annual fee ($) *	Fee of wage (%)	Annual mean wage ($)	Annual mean wage ($) **	Annual fee ($) ***	Fee of wage (%)
Dentists, General	163,240	244	0.15	175,840	182,140	296	0.16
Physicians and Surgeons	190,060	244	0.13	210,980	221,440	296	0.13
Physician Assistants	92,460	244	0.26	108,430	116,415	296	0.25
Nurse Practitioners	91,450	244	0.27	110,030	119,320	296	0.25

Source: BLS. *https://www.bls.gov/oes/tables.htm* (accessed 10/5/2019).

* The current fee is $731 per three years, annual-equivalent of $244.

** Annual mean wage data for 2012 and 2018 is provided by the Bureau of Labor Statistics. The 2021 annual mean wage figures are estimated based on linear extrapolation, where an average annual increase is calculated from years 2012 to 2018, then extending out the increase for three more years to 2021.

*** The new fee is $888 per three years, annual-equivalent of $296.

Exempt from the payment of registration fees are any hospital or other institution that is operated by an agency of the U.S., of any State, or any political subdivision of an agency thereof. Likewise, an individual who is required to obtain a registration in order to carry out his/her duties as an official of a federal or State agency is also exempt from registration fees. Fee exempt registrants are not affected by the new fees.

[29] This example is for illustration purposes only. Each entity should seek competent tax advice for tax consequences of the rule.

[30] From Table 14, the increase in annual mean wages from 2012 to 2021 are for dentists 12 percent (182,140/163,240–1), physicians 17 percent (221,440/190,060–1), physician assistants 26 percent (116,415/92,460–1), and nurse practitioners 30 percent (119,320/91,450–1).

d. Analysis of Benefits, Costs, and Transfers

Benefits

The primary benefit of the rule is continued support to the DCP, without the need for any additional congressional appropriations. The DCP is a strategic component of U.S. law and policy aimed at preventing, detecting, and eliminating the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes. The absence of, or significant reduction in, this program would result in enormous costs for the citizens and residents of the U.S. due to the diversion of controlled substances and listed chemicals into the illicit market as discussed earlier in this document.

Costs

This rule has little or no cost, as fees to DEA are transfer payments.

Transfers

The difference between the current fees and the new fees—the fee increase—is $318 million over the three year period, from FY 2021 to FY 2023, or approximately $106 million annually. The difference in the fees projected to be collected under the current fee rates and the new fee rates is $102 million, $105 million, and $110 million in FY 2021, FY 2022, and FY 2023, respectively. Table 16 summarizes the estimated collections under the current fees, estimated collections under the new fees, and the difference between the current and the new fees.

TABLE 16—ESTIMATED COLLECTIONS UNDER CURRENT AND NEW FEES

Estimated collections	FY 2021 ($M)	FY 2022 ($M)	FY 2023 ($M)	Total ($M)
Current Fee	474	491	514	1,479
New Fee	576	596	625	1,797
Difference	102	105	110	318

The present value of the transfer is $299 million at a three percent discount rate and $277 million at a seven percent discount rate.

E.O. 13771 was issued on January 30, 2017, and published in the **Federal Register** on February 3, 2017. 82 FR 9339. This rule is not subject to the requirements of E.O. 13771 because this rule is expected to result in no more than *de minimis* costs.

Executive Order 12988, Civil Justice Reform

This rulemaking meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132, Federalism

This rulemaking does not preempt or modify any provision of State law, nor does it impose enforcement responsibilities on any State, nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of E.O. 13132.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this rule and by approving it, certifies that it will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The RFA requires agencies to analyze options for regulatory relief of small entities unless it can certify that the rule will not have a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. DEA evaluated the impact of this rule on small entities, and discussions of its findings are below.

As discussed above and in the Economic Analysis section above, DEA analyzed three fee calculation methodologies—Flat Fee, Past-Based, and Weighted-Ratio. DEA selected the Weighted-Ratio (current) methodology to calculate the new fee structure. This approach has been used since Congress established registration fees, and continues to be a reasonable reflection of differing costs. The registration fees under the Weighted-Ratio option result in differentiated fees among registrant groups, where registrants with larger revenues pay higher fees than registrants with lower revenues. Furthermore, the Weighted-Ratio option does not create a disparity in the relative increase in fees from the current to the new fees. The weighted-ratios used by DEA to calculate the current fee have proven effective and reasonable over time. Additionally, the weighted-ratio calculation methodology generally reflects the differences in activity level, notably in inspections, scheduled investigations and other control and monitoring, by registrant category; for example, these costs are greatest for manufacturers. DEA selected this option because it is the only option that results in reasonable fees for all registrant groups.

This approach increases fees proportionally (21 percent) across all registrant groups, maintaining the weighted-ratio of 1.0, 3.0, 6.25, and 12.5. The annual increase in fees are $52, $327, and $652 based on business activity. The table below summarizes the difference in fees between the new and current fees.

TABLE 17—DIFFERENCE IN FEES UNDER CURRENT AND NEW FEES

Business activity	Total registrations (FY 2021–FY 2023)	Current fees ($)	New fees ($)	Total collections under new fees ($)	Difference in fees ($) *
Registrants on Three Year Registration Cycle:					
Pharmacy	80,199	731	888	71,216,712	157
Hospital/Clinic	16,638	731	888	14,774,544	157
Practitioner	1,356,876	731	888	1,204,905,888	157
Teaching Institution	130	731	888	115,440	157
Mid-level Practitioner (MLP)	539,899	731	888	479,430,312	157
Registrants on Annual Registration Cycle:					
Manufacturer	1,733	3,047	3,699	6,410,367	652
Distributor	1,999	1,523	1,850	3,698,150	327
Researcher/Canine Handler	15,113	244	296	4,473,448	52
Analytical Lab	2,724	244	296	806,304	52
Importer	666	1,523	1,850	1,232,100	327
Exporter	792	1,523	1,850	1,465,200	327
Reverse Distributor	219	1,523	1,850	405,150	327
Narcotic Treatment Program	5,935	244	296	1,756,760	52
Chemical Manufacturer	624	3,047	3,699	2,308,176	652
Chemical Importer	606	1,523	1,850	1,121,100	327
Chemical Distributor	988	1,523	1,850	1,827,800	327
Chemical Exporter	450	1,523	1,850	832,500	327
Total	2,025,591	N/A	N/A	1,796,779,951	N/A

* The difference for registrations on a three-year cycle is $157 or $52 on annual basis.

As shown in Table 12, the new fees would affect a wide variety of entities across many industry sectors. As some industry sectors are expected to consist primarily of DEA registrants, *i.e.,* 446110-Pharmacies and Drug Stores, 622110-General Medical and Surgical Hospitals, etc., this rule is expected to affect a substantial number of small entities.

DEA compared the annual increase in fees from current fees to new fees for the smallest of small businesses in each industry sectors. For each of the affected industry sectors, the annual increase was not more than 0.1 percent of average annual revenue. The table below summarizes the results.

TABLE 18—FEE INCREASE AS PERCENTAGE OF ANNUAL REVENUE

NAICS code	NAICS code description	Enterprise size (number of employees)	Number of establishments	Average revenue per establishment ($)	Fee increase ($)	Fee increase of revenue (%)
325	Chemical Manufacturing	0–4	3,148	1,938,546	652	0.0319
325411	Medicinal and Botanical Manufacturing	0–4	108	727,444	652	0.0851
325412	Pharmaceutical Preparation Manufacturing.	* 5–9	129	2,639,287	652	0.0235
424210	Drugs and Druggists' Sundries Merchant Wholesalers.	0–4	3,630	1,367,131	327	0.0239
424690	Other Chemical and Allied Products Merchant Wholesalers.	0–4	3,352	2,007,996	327	0.0154
445110	Supermarkets and Other Grocery (except Convenience) Stores.	0–4	23,710	453,787	52	0.0108
446110	Pharmacies and Drug Stores	0–4	6,360	1,069,655	52	0.0046
452112	Discount Department Stores	0–4	6	266,167	52	0.0184
452910	Warehouse Clubs and Supercenters	0–4	12	326,333	52	0.0150
541380	Testing Laboratories	0–4	2,415	297,737	52	0.0165
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).	0–4	5,013	427,790	52	0.0115
541940	Veterinary Services	0–4	8,881	292,166	52	0.0168
561612	Security Guards and Patrol Services	0–4	2,162	114,198	52	0.0429
5621	Waste Collection	0–4	3,853	365,902	327	0.0844
5622	Waste Treatment and Disposal	0–4	616	461,159	327	0.0670
611310	Colleges, Universities, and Professional Schools.	0–4	372	913,078	52	0.0054
621111	Offices of Physicians (except Mental Health Specialists).	0–4	95,648	447,715	52	0.0109
621112	Offices of Physicians, Mental Health Specialists.	0–4	8,980	253,837	52	0.0193
621210	Offices of Dentists	0–4	50,781	330,868	52	0.0148
621320	Offices of Optometrists	0–4	10,939	269,348	52	0.0182

TABLE 18—FEE INCREASE AS PERCENTAGE OF ANNUAL REVENUE—Continued

NAICS code	NAICS code description	Enterprise size (number of employees)	Number of establishments	Average revenue per establishment ($)	Fee increase ($)	Fee increase of revenue (%)
621330	Offices of Mental Health Practitioners (except Physicians).	0–4	16,149	145,005	52	0.0338
621391	Offices of Podiatrists	0–4	5,300	288,546	52	0.0170
621420	Outpatient Mental Health and Substance Abuse Centers.	0–4	1,810	211,249	52	0.0232
621491	HMO Medical Centers	*5–9	16	620,188	52	0.0079
621493	Freestanding Ambulatory Surgical and Emergency Centers.	0–4	1,011	549,974	52	0.0089
622110	General Medical and Surgical Hospitals	0–4	39	10,621,308	52	0.0005
622210	Psychiatric and Substance Abuse Hospitals.	*20–99	27	5,142,444	52	0.0010
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals.	0–4	21	8,561,238	52	0.0006

*Where the revenue figure for the smallest size category is unavailable, the next size up with available revenue figure is used.

While this rule affects a substantial number of small businesses, because the economic impact for the smallest of small businesses is not significant, the rule will not have a significant impact on small entities as a whole. In summary, DEA's evaluation of economic impact by size category indicates that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $154 million or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed subject to the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

Paperwork Reduction Act of 1995

This rulemaking does not create or modify a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rulemaking will not impose additional recordkeeping or reporting requirements on State or local governments, individuals, businesses, or other organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Congressional Review Act

This final rule is a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This rule will result in an annual effect on the economy of $100,000,000 or more in the form of transfers, as fees paid to DEA are considered transfer payments and not costs. However, this rule will not cause a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. DEA submitted a copy of the final rule to both Houses of Congress and to the Comptroller General.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, Exports, Imports, Security measures.

For the reasons set forth above, DEA amends 21 CFR parts 1301 and 1309 as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 956, 957, 958, 965.

■ 2. Amend § 1301.13 by revising the fourth sentence in paragraph (e) introductory text and revising paragraph (e)(1) to read as follows:

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

* * * * *

(e) * * * Generally, the application fees are not refundable; however, they may be issued in limited circumstances at the discretion of the Administrator. These circumstances include: Applicant error, such as duplicate payments, payment for incorrect business activities, or payments made by persons who are exempt under this section from application or renewal fees; DEA error; and death of a registrant within the first year of the three-year registration cycle. * * *

(1)

SUMMARY OF REGISTRATION REQUIREMENTS AND LIMITATIONS

Business activity	Controlled substances	DEA application forms	Application fee ($)	Registration period (years)	Coincident activities allowed
(i) Manufacturing	Schedules I –V	New—225 Renewal—225a	3,699	1	Schedules I–V: May distribute that substance or class for which registration was issued; may not distribute or dispose any substance or class for which not registered. Schedules II–V: May conduct chemical analysis and preclinical research (including quality control analysis) with substances listed in those schedules for which authorization as a mfr. was issued.
(ii) Distributing	Schedules I–V	New—225 Renewal—225a	1,850	1	May acquire Schedules II–V controlled substances from collectors for the purposes of destruction.
(iii) Reverse distributing	Schedules I–V	New—225 Renewal—225a	1,850	1	
(iv) Dispensing or instructing (includes Practitioner, Hospital/Clinic, Retail Pharmacy, Central fill pharmacy, Teaching Institution).	Schedules II–V	New—224 Renewal—224a	888	3	May conduct research and instructional activities with those substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under state statute. A pharmacist may manufacture an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in Schedule II–V in a proportion not exceeding 20% of the complete solution, compound or mixture. A retail pharmacy may perform central fill pharmacy activities.
(v) Research	Schedule I	New—225 Renewal—225a	296	1	A researcher may manufacture or import the basic class of substance or substances for which registration was issued, provided that such manufacture or import is set forth in the protocol required in § 1301.18 and to distribute such class to persons registered or authorized to conduct research with such class of substance or registered or authorized to conduct chemical analysis with controlled substances.
(vi) Research	Schedules II–V	New—225 Renewal—225a	296	1	May conduct chemical analysis with controlled substances in those schedules for which registration was issued; manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration or reregistration and provided that the manufacture is not for the purposes of dosage form development; import such substances for research purposes; distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities or research with such substances, and to persons exempted from registration pursuant to § 1301.24; and conduct instructional activities with controlled substances.
(vii) Narcotic Treatment Program (including compounder).	Narcotic Drugs in Schedules II–V.	New—363 Renewal—363a	296	1	
(viii) Importing	Schedules I–V	New—225 Renewal—225a	1,850	1	May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered.
(ix) Exporting	Schedules I–V	New—225 Renewal—225a	1,850	1	
(x) Chemical Analysis	Schedules I–V	New—225 Renewal—225a	296	1	May manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempted from registration pursuant to § 1301.24; may export such substances to persons in other countries performing chemical analysis or enforcing laws related to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

* * * * *

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS, AND EXPORTERS OF LIST I CHEMICALS

■ 3. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 823, 824, 830, 871(b), 875, 877, 886a, 952, 953, 957, 958.

■ 4. Revise § 1309.11 to read as follows:

§ 1309.11 Fee Amounts.

(a) For each application for registration or reregistration to manufacture for distribution the applicant shall pay an annual fee of $3,699.

(b) For each application for registration or reregistration to distribute (either retail distribution or non-retail distribution), import, or export a list I chemical, the applicant shall pay an annual fee of $1,850.

■ 5. Amend § 1309.12 by revising the last sentence in paragraph (b) to read as follows:

§ 1309.12 Time and method of payment; refund.

* * * * *

(b) * * * Generally, the application fees are not refundable; however, they may be issued in limited circumstances at the discretion of the Administrator. These circumstances include: Applicant error, such as duplicate payments, payment for incorrect business activities, or payments made by persons who are exempt under this section from application or renewal fees; DEA error; and death of a registrant within the first year of the three-year registration cycle.

■ 6. Amend § 1309.21 by revising the table in paragraph (c) to read as follows:

§ 1309.21 Persons required to register.

* * * * *

(c) * * *

SUMMARY OF REGISTRATION REQUIREMENTS AND LIMITATIONS

Business activity	Chemicals	DEA forms	Application fee	Registration period (years)	Coincident activities allowed
(1) Manufacturing	List I, Drug products containing ephedrine, pseudoephedrine, phenylpropanolamine.	New–510 Renewal–510a	3,699	1	May distribute that chemical for which registration was issued; may not distribute any chemical for which not registered.
(2) Distributing	List I, Scheduled listed chemical products.	New–510 Renewal–510a	1,850	1	
(3) Importing	List I, Drug Products containing ephedrine, pseudoephedrine, phenylpropanolamine.	New–510 Renewal–510a	1,850	1	May distribute that chemical for which registration was issued; may not distribute any chemical for which not registered.
(4) Exporting	List I, Scheduled listed chemical products.	New–510 Renewal–510a	1,850	1	

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–16169 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0394]

RIN 1625–AA00

Safety Zone; Erie Yacht Club 125th Anniversary Summer Event, Presque Isle Bay, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 420-foot radius of the Lake Shore Towing barge launching fireworks at the position of 42°07′60″ N 80°08′00″ W. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo or a designated representative.

DATES: This rule is effective from 8 p.m. through 10:45 p.m. on August 1, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0394 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, contact LT Sean Dolan, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo via telephone 716–843–9322 or email *D09-SMB-SECBuffalo-WWM@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 the event sponsor did not submit notice to the Coast Guard with sufficient time

remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with this fireworks display.

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**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Buffalo determined that a maritime fireworks show presents significant risks to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks show is taking place.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 p.m. through 10:45 p.m. on August 1, 2020. The safety zone will encompass all waters of the Presque Isle Bay; Erie, PA contained within a 420-foot radius of position 42°07′60″ N 80°08′00″ W. The duration of the zone is intended to ensure the safety of spectators and vessels during the Erie Yacht Club 125th Anniversary Summer Event fireworks display. 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 conclusion that this rule is not a significant regulatory action. Vessel traffic will be able to safely transit around this safety zone, which impacts a small designated area of Presque Isle Bay. The event will also have built in times where vessels will be able to transit through the safety zone during breaks. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels 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 establishes a temporary safety zone. 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

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0394 to read as follows:

§ 165.T09–0394 Safety Zone; Erie Yacht Club 125th Anniversary Summer Event; Presque Isle Bay, Erie, PA.

(a) Location. The safety zone will encompass a 420-foot radius of position 42°07′60″ N 80°08′00″ W of Preque Isle Bay, Erie, PA.

(b) Enforcement period. This rule is enforced from 8 p.m. until 10:45 p.m. on August 1, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or her designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or her on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or her on-scene representative.

Dated: July 10, 2020.

L.M. Littlejohn,

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

[FR Doc. 2020–15741 Filed 7–23–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0446]

RIN 1625–AA00

Safety Zone; Northern Atlantic Ocean, Nahant, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 100-yard radius of the DREDGE 200 salvage vessels and machinery located in the Northern Atlantic Ocean approximately 2 miles southeast of Nahant, Massachusetts. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by salvage operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Boston (COTP) or a designated representative.

DATES: This rule is effective without actual notice from July 24, 2020 through August 12, 2020. For the purposes of enforcement, actual notice will be used from July 22, 2020 through July 24, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0446 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 MSTC Ramirez, Waterways Management, U.S. Coast Guard; telephone 617–447–1620, email *Jae.L.Ramirez@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 the DREDGE 200 sank in close proximity to the North Channel outside of the Boston Harbor and immediate action is needed to respond to the potential safety hazards associated with salvage operations. It is impracticable to publish an NPRM because we must establish this safety zone by July 22, 2020.

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 immediate action is needed to respond to the potential safety hazards associated with the DREDGE 200 salvage operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with salvage operations starting July 22, 2020, will be a safety concern for anyone within a 100-yard radius of salvage vessels and machinery. This rule is needed to protect personnel,

vessels, and the marine environment in the navigable waters within the safety zone while the DREDGE 200 is salvaged.

IV. Discussion of the Rule

This rule establishes a safety zone from July 22, 2020 through August 12, 2020. The safety zone will cover all navigable waters within 100 yards of vessels and machinery being used by personnel to salvage the DREDGE 200 located in the Northern Atlantic Ocean, latitude 42°23.937′ N, longitude 070°52.525′ W, approximately 2 miles southeast of Nahant, Massachusetts. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the DREDGE 200 is salvaged. 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 size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels 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 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 12 days that will prohibit entry within 100 yards of vessels and machinery being used by personnel to salvage the DREDGE 200. It is categorically excluded from further review under paragraph L(60a) 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

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

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

PART 165—REGULATED NAVIGACTION 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.T01–0446 to read as follows:

§ 165.T01–0446 Safety Zone; Northern Atlantic Ocean, Nahant, MA.

(a) *Location.* The following area is a safety zone: all navigable waters of the Northern Atlantic Ocean, within 100 yards of latitude 42°23.937′ N, longitude 070°52.525′ W, approximately 2 miles southeast of Nahant, Massachusetts.

(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 a Federal, State, and local officer designated by or assisting the COTP Boston in the enforcement of the safety zone.

(c) *Regulations.* When this safety zone is enforced, the following regulations, along with those contained in 33 CFR 165.23 apply:

(1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via Channel 16 (VHF–FM) or 617–223–5757 (Sector Boston Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 12:01 a.m. on July 21, 2020, to 11:59 p.m. on August 12, 2020.

(e) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: July 21, 2020.

Eric J. Doucette,

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

[FR Doc. 2020–16212 Filed 7–23–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0634; FRL–10012–07–Region 5]

Air Plan Approval; Indiana; Revisions to NO_X SIP Call and CAIR Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving under the Clean Air Act (CAA) a request from the Indiana Department of Environmental Management (IDEM) to revise the Indiana State Implementation Plan (SIP) to incorporate the following: A new rule concerning nitrogen oxide (NO_X) emissions for the ozone season from Electric Generating Units (EGUs) and large non-EGUs; revisions concerning NO_X emission rate limits for specific source categories; the repeal of the NO_X Budget Trading Program; and the repeal of the Clean Air Interstate Rule (CAIR) NO_X ozone season trading program. This SIP revision will ensure continued compliance by EGUs and large non-EGUs with the requirements of the NO_X SIP Call.

DATES: This final rule is effective on August 24, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0634. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

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

I. What is the background for this final rule?

Under the ''good neighbor provision'' of CAA section 110(a)(2)(D)(i)(I), states are required to eliminate their significant contributions to air quality problems in downwind states. To address the good neighbor provision for progressively more protective National Ambient Air Quality Standards (NAAQS) for ozone and fine particulate matter ($PM_{2.5}$), EPA published a series of regulations requiring eastern states, including Indiana, to comply with statewide budgets limiting ozone season emissions of NO_X, a precursor to ozone, as well as annual emissions of NO_X and sulfur dioxide (SO_2), precursors to $PM_{2.5}$.

On October 27, 1998, EPA published the NO_X SIP Call, which addressed the good neighbor provision for the 1979 ozone NAAQS by requiring eastern states to submit SIPs complying with statewide budgets for ozone season NO_X emissions (63 FR 57356). The NO_X SIP Call also established the NO_X Budget Trading Program, an allowance trading program that states could adopt to meet most of their obligations under the NO_X SIP Call. On May 12, 2005, EPA published CAIR, which addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 $PM_{2.5}$ NAAQS by requiring eastern states to submit SIPs complying with statewide budgets for ozone season NO_X emissions and annual NO_X and SO_2 emissions (70 FR 25152). CAIR also established allowance trading programs that states could adopt to meet their obligations. Upon implementation of the CAIR trading program for ozone season NO_X in 2009, EPA discontinued administration of the NO_X Budget Trading Program. Both the NO_X SIP Call and CAIR allowed certain sources to participate in the trading programs: EGUs with capacity greater than 25 megawatts; and large non-EGUs, such as boilers and combustion turbines, with a rated heat input greater

than 250 million British thermal units (MMBtu) per hour.

To meet the requirements of the NO_X SIP Call, IDEM promulgated rules at 326 IAC 10–3 and 326 IAC 10–4, and to meet the requirements of CAIR, IDEM promulgated rules at 326 IAC 24–1, 326 IAC 24–2, and 326 IAC 24–3. EPA approved the original versions of Indiana's NO_X SIP Call rules and CAIR rules into the SIP on November 8, 2001 (66 FR 56465) and October 22, 2007 (72 FR 59480), respectively; EPA most recently approved revised versions of these rules on November 29, 2010 (75 FR 72956).

On August 8, 2011, EPA published the Cross-State Air Pollution Rule (CSAPR), which replaced CAIR and addressed the good neighbor provision for the 1997 ozone NAAQS, 1997 $PM_{2.5}$ NAAQS, and 2006 $PM_{2.5}$ NAAQS by establishing new statewide budgets in eastern states for ozone season NO_X emissions and annual NO_X and SO_2 emissions (76 FR 48208). Participation by a state's EGUs in the CSAPR trading program for ozone season NO_X generally addressed NO_X SIP Call obligations for EGUs. However, CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the ongoing requirements of the NO_X SIP Call for non-EGUs.

Most recently, on October 26, 2016, EPA published the CSAPR Update, which addressed the good neighbor provision for the 2008 ozone NAAQS by establishing new statewide budgets in eastern states for ozone season NO_X emissions (81 FR 74504). The CSAPR Update also expanded options available to states for meeting NO_X SIP Call requirements for large non-EGUs.

After evaluating the various options available following promulgation of the CSAPR Update, IDEM chose to meet NO_X SIP Call requirements for large non-EGUs by adopting a new rule at 326 IAC 10–2 and revising its rule at 326 IAC 10–3. The new rule at 326 IAC 10–2 makes the portion of the state's NO_X SIP Call budget assigned to non-EGUs enforceable without an allowance trading mechanism, and the revised rule at 326 IAC 10–3 provides source-by-source emission rate limits for certain blast furnace gas-fired units formerly regulated under the NO_X Budget Trading Program. IDEM also repealed its CAIR rules at 326 IAC 24–1, 326 IAC 24–2, and 326 IAC 24–3 and its NO_X Budget Trading Program rule at 326 IAC 10–4. In its August 27, 2018 submission, IDEM requested that EPA approve these changes into the Indiana SIP.

On December 17, 2018 (83 FR 64472), EPA approved a separate November 27, 2017 submission from IDEM, which removed 326 IAC 24–1, 326 IAC 24–2, and portions of 326 IAC 24–3 from the Indiana SIP. Following the December 17, 2018 SIP action, portions of 326 IAC 24–3 are the only part of Indiana's CAIR rules that remain in the Indiana SIP.

On February 21, 2020 (85 FR 10064), EPA published a direct final rule approving Indiana's request to modify its SIP to include the new rule at 326 IAC 10–2 and the revised rule at 326 IAC 10–3 and to remove 326 IAC 10–4 and 326 IAC 24–3. The direct final rule contains a detailed analysis of Indiana's submittal. In the direct final rule, EPA stated that if adverse comments were received by March 23, 2020, the rule would be withdrawn and would not take effect. EPA received adverse comments prior to the close of the comment period; therefore, EPA published a withdrawal of the direct final rule on April 10, 2020 (85 FR 20165). EPA is addressing the adverse comments in this final action, based upon the proposed action also published on February 21, 2020 (85 FR 10127).

II. What are EPA's responses to comments?

During the comment period, EPA received three comments, all of which are available in the docket for this action. A summary of these comments, and EPA's response, is provided below.

Comment: A commenter refers to a court case involving Monsanto. Without further clarifying the source at issue, the commenter alleges that these rule revisions would allow an increase in NO_X emissions at ''the plant''. The commenter raises concerns that hearings have been closed to the public and asserts that approving IDEM's revisions would violate the CAA by increasing EPA's regulatory authority.

Response: The commenter's objection does not appear to be relevant to EPA's approval of Indiana's SIP submission and is therefore outside of the scope of this action. According to a list of affected sources provided by IDEM, these rule revisions would not modify any requirements for any Monsanto facility. Further, as discussed in EPA's direct final rule, the majority of these revisions either add new requirements, remove provisions that have no impact on emissions, or replace existing requirements under one rule with identical requirements under another rule. For two sources, ArcelorMittal Indiana Harbor East and US Steel Gary Works, these revisions modify emissions monitoring requirements, but the revisions are not expected to cause a change in emissions levels. The commenter did not raise any specific objections to EPA's conclusion that IDEM's revisions will not result in increased NO_X emissions from affected sources. Finally, EPA notes that the commenter did not explain why these revisions might increase EPA's regulatory authority and did not explain how any hearings were closed to the public. In fact, there was no public hearing associated with the comment period for this rulemaking.

Comment: A commenter states that ''EPA's illegal approval of these revisions is hampered by the Court's decision in *Wisconsin* v. *EPA* and *New York* v. *EPA.*'' The commenter alleges that these cases require EPA to consider the environmental impacts of its decisions. The commenter writes that ''EPA's only primary consideration should be whether the decision will reduce adverse impacts on human health or the environment, not whether it will increase economic growth or stave off any harm to the environment.''

Response: The decisions apparently referenced by this commenter, *Wisconsin* v. *EPA,* 938 F.3d 303 (2019) and *New York* v. *EPA,* 781 Fed. App'x 4 (2019), both involve challenges to the CSAPR Update. In *Wisconsin,* the D.C. Circuit considered consolidated challenges from environmental petitioners, who argued that the rule was too lenient, as well as state and industry petitioners, who argued that the rule was too strict. The court's *Wisconsin* decision upheld the CSAPR Update in most respects but found that the rule improperly allows upwind states to continue their significant contributions to downwind air quality problems beyond attainment dates provided under the CAA. 938 F.3d at 312–20. On this issue, the court remanded CSAPR Update to EPA. *Id.* at 336. In *New York,* the D.C. Circuit considered a parallel challenge to EPA's CSAPR Close-Out, published December 21, 2018 (83 FR 65878). In the Close-Out, EPA determined that CSAPR Update fully addressed eastern states' obligations under the good neighbor provision for the 2008 ozone NAAQS. However, consistent with the *Wisconsin* court's holding that EPA had not properly considered the CAA attainment dates, the court in *New York* vacated the Close-Out. 781 Fed. App'x at 6–7.

The commenter does not explain how the decisions in *Wisconsin* or *New York* would prevent EPA from approving IDEM's revisions. Aside from its holding that EPA must adhere to the attainment dates when addressing good neighbor obligations under the 2008 ozone NAAQS, the D.C. Circuit in *Wisconsin*

otherwise found ''that EPA acted lawfully and rationally'' in promulgating the CSAPR Update. 938 F.3d at 309. In particular, the court in *Wisconsin* upheld EPA's analysis of appropriate cost-control levels for emissions reductions, which was the primary economic issue considered by the court. *Id.* at 322–23. The court's remand of the CSAPR Update was focused solely on EPA's obligation to implement emission reductions consistent with the attainment dates associated with the 2008 ozone NAAQS. The *Wisconsin* and *New York* decisions have no impact on EPA's evaluation of NO_X SIP Call requirements pertaining to the 1979 ozone NAAQS, or CAIR requirements pertaining to the 1997 ozone NAAQS and 1997 $PM_{2.5}$ NAAQS, which are the requirements being addressed under these rule revisions. In the February 21, 2020 direct final rule, EPA appropriately addressed the environmental impacts of these revisions and determined that the SIP revisions would not result in a change to NO_X emissions from Indiana EGUs or large non-EGUs.

Comment: A commenter alleges that ''EPA can't approve these revisions because the Court vacated CSAPR Update in the Wisconsin case leaving EPA with a gaping regulatory hole.'' The commenter further asserts that the court's vacatur upended the reporting and testing requirements in the NO_X SIP call rule. The commenter therefore contends that EPA cannot approve IDEM's revisions until EPA replaces the CSAPR Update and ''fixes the *Wisconsin* v. *EPA* and *New York* v. *EPA* vacatures.''

Response: This commenter also apparently references *Wisconsin* v. *EPA,* 938 F.3d 303 (2019) and *New York* v. *EPA,* 781 Fed. App'x 4 (2019). In *Wisconsin,* the D.C. Circuit rejected arguments that the CSAPR Update should be vacated, holding that ''as a general rule, we do not vacate regulations when doing so would risk significant harm to the public health or the environment.'' 938 F.3d at 336. Because the CSAPR Update remains in place, there is no ''regulatory hole'' that EPA must address before IDEM's revisions can be approved. Further, the vacatur in *New York* involves only EPA's finding in the Close-Out that the CSAPR Update resolves upwind states' obligations under the good neighbor provision for the 2008 ozone NAAQS.

Following EPA's approval of these revisions into the Indiana SIP, large non-EGUs will satisfy their ongoing obligations under the NO_X SIP Call in a manner that does not rely on the CSAPR trading programs. IDEM continues to satisfy its obligations under the NO_X SIP Call as to EGUs through participation in the CSAPR trading programs. Neither the *Wisconsin* remand nor the *New York* vacatur affect EPA's finding in the CSAPR Update that ''compliance with the budgets established under the CSAPR Update would satisfy the requirements of the NO_X SIP Call'' for EGUs (81 FR 74504 at 74571), nor have any of the monitoring and reporting requirements of the CSAPR Update been affected. Therefore, the decisions in *Wisconsin* or *New York* have not created any ''regulatory hole'' for either EGUs or large non-EGUs which would prevent EPA from approving these rule revisions.

III. What action is EPA taking?

EPA is approving IDEM's request to modify its SIP to include the new rule at 326 IAC 10–2 and the revised rule at 326 IAC 10–3 and to remove 326 IAC 10–4 and 326 IAC 24–3.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

Also in this document, as described in the amendments to 40 CFR part 52 set forth below, EPA is removing provisions of the EPA-Approved Indiana Regulations from the Indiana SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

V. Statutory and Executive Order Reviews.

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

[1] 62 FR 27968 (May 22, 1997).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 9, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

For the reasons states in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770, the table in paragraph (c) is amended by:

■ a. Revising the section entitled ''Article 10. Nitrogen Oxides Rules''; and

■ b. Removing the heading ''Rule 3. Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program'' and the entries for ''24–3–1'', ''24–3–2'', ''24–3–4'', and ''24–3–11''.

The revision reads as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Comments
*	*	*	*	*
Article 10. Nitrogen Oxides Rules				
10–1	Nitrogen Oxides Control in Clark and Floyd Counties.	6/12/1996	6/3/1997, 62 FR 30253.	
10–2	NO_X Emissions from Large Affected Units	8/26/2018	7/24/2020, [Insert **Federal Register** citation].	
10–3	Nitrogen Oxide Reduction Program for Specific Source Categories.	8/26/2018	7/24/2020, [Insert **Federal Register** citation].	
10–5	Nitrogen Oxide Reduction Program for Internal Combustion Engines (ICE).	2/26/2006	10/1/2007, 72 FR 55664.	
10–6	Nitrogen Oxides Emission Limitations for Southern Indiana Gas and Electric Company.	8/30/2008	11/10/2009, 74 FR 57904.	
*	*	*	*	*

* * * * *

[FR Doc. 2020–15220 Filed 7–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2020–0143; FRL–10007–42–Region 10]

Air Plan Approval; ID; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the regulatory materials incorporated by reference into the Idaho State Implementation Plan (SIP). The regulations addressed in this action were previously submitted by the Idaho Department of Environmental Quality and approved by the EPA in prior rulemakings. This action is an administrative change that updates the SIP materials available for public inspection at the EPA Regional Office and the National Archives and Records Administration.

DATES: This action is effective July 24, 2020.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Online at *https://www.regulations.gov* in the docket for this action, by appointment at the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, and by appointment at the National Archives and Records Administration (NARA). For information on the availability of this material at the EPA Regional Office, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. 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.*

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357 or *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The State Implementation Plan (SIP) is a living document revised by the state to address its unique and changing air pollution problems in a manner consistent with the requirements of Section 110 of the Clean Air Act (CAA), 42 U.S.C. 7410. As such, the state submits SIP revisions to the EPA and the EPA acts on those revisions and incorporates new and revised state regulations by reference into the Code of Federal Regulations (CFR).

On May 22, 1997, the EPA and the Office of the Federal Register (OFR) streamlined the incorporation by reference (IBR) procedures for SIPs (62 FR 27968). For a detailed description of the revised IBR procedures, please see the May 22, 1997 publication (62 FR 27968).

On January 25, 2005, the EPA published a **Federal Register** document beginning the revised IBR procedures for Idaho (70 FR 3479). The EPA updated the Idaho SIP regulatory materials on December 28, 2012 (77 FR 76417), and April 1, 2015 (80 FR 17333). Since the last IBR update, the EPA approved and incorporated by reference the following regulatory materials into the Idaho SIP: [1]

A. Added

- IDAPA 58.01.01 (Rules for the Control of Air Pollution in Idaho): Sections 011, 175, 176, 177, 178, 179, 180, 181, 790, 791, 793, 794, 795, 796, 797, 798, 799, and 818.
- Section 4 of Senate Bill 1024, Codified at Idaho Code Section 39–114.

B. Revised

- IDAPA 58.01.01 (Rules for the Control of Air Pollution in Idaho): Sections 006, 107, 157, 200, 201, 202, 401, 579, 620, 621, 725, and 815.

C. Removed

- IDAPA 58.01.01 (Rules for the Control of Air Pollution in Idaho): Sections 582, 816, 817, 821, 822, 823, 824, 825, and 826.
- Section 1 of House Bill 57, Codified at Idaho Code Section 39–114.

II. EPA Action

In this action, the EPA is updating the regulatory materials incorporated by reference into the Idaho SIP at 40 CFR 52.670(c) and (d) as of February 1, 2020.

The EPA has determined that this rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of previously EPA-approved regulations promulgated by Idaho and federally effective prior to February 1, 2020. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

[1] See 81 FR 53290 (August 12, 2016), 82 FR 22083 (May 12, 2017), 83 FR 28382 (June 19, 2018), 83 FR 42033 (August 20, 2018), 84 FR 13803 (April 8, 2019), and 84 FR 67189 (December 9, 2019).

The EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Idaho SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, the EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' update action for Idaho.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 10, 2020.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart N—Idaho

■ 2. Amend § 52.670 by revising paragraphs (b), (c), and (d) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after February 1, 2020, will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region 10 certifies that the rules and regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules and regulations which have been approved as part of the state implementation plan as of February 1, 2020.

(ii) EPA Region 10 certifies that the source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated source-specific requirements which have been approved in the notebook ''40 CFR 52.670(d)—Source Specific Requirements'' as part of the state implementation plan as of February 1, 2020.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 10, Air and Radiation Division, 1200 Sixth Avenue, Suite 155, Seattle, Washington 98101; or 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.*

(c) EPA approved regulations.

EPA APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
001	Title and Scope	5/1/1994	1/16/2003, 68 FR 2217	
004	Catchlines	5/1/1994	1/16/2003, 68 FR 2217	
005	Definitions	5/1/1994	1/16/2003, 68 FR 2217	
006	General Definitions	4/11/2015, 4/4/2013, 3/30/2007, 4/11/2006, 7/1/2002, 4/5/2000, 3/20/1997, 5/1/1994	8/12/2016, 81 FR 53290.	Except Section 006.49, 006.50, 006.51, 006.66, 006.67, 006.68.b, 006.116, and 006.118.
007	Definitions for the Purposes of Sections 200 through 225 and 400 through 461.	3/30/2007, 4/11/2006, 4/5/2000, 6/30/1995, 5/1/1995, 5/1/1994	6/9/2011, 76 FR 33647	
011	Definitions for the Purposes of Sections 790 through 799.	3/15/2002	8/12/2016, 81 FR 53290	
106	Abbreviations	5/1/1994	1/16/2003, 68 FR 2217	
107	Incorporations by Reference	3/28/2018, 3/25/2016, 3/20/2014, 3/30/2007, 7/1/1997, 5/1/1994	8/20/2018, 83 FR 42033.	Except Section 107.03.f through 107.03.p.
121	Compliance Requirements by Department.	5/1/1994	1/16/2003, 68 FR 2217	
122	Information Orders by the Department.	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217	
123	Certification of Documents	5/1/1994	1/16/2003, 68 FR 2217	
124	Truth, Accuracy and Completeness of Documents.	5/1/1994	1/16/2003, 68 FR 2217	
125	False Statements	3/23/1998	1/16/2003, 68 FR 2217	
126	Tampering	3/23/1998	1/16/2003, 68 FR 2217	
127	Format of Responses	5/1/1994	1/16/2003, 68 FR 2217	
130	Startup, Shutdown, Scheduled Maintenance, Safety Measures, Upset and Breakdown.	4/5/2000	1/16/2003, 68 FR 2217	
131	Excess Emissions	4/5/2000	1/16/2003, 68 FR 2217	
132	Correction of Condition	4/5/2000	1/16/2003, 68 FR 2217	

EPA APPROVED IDAHO REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
133	Start-up, Shutdown and Scheduled Maintenance Requirements.	4/11/2006, 4/5/2000, 3/20/1997	11/26/2010, 75 FR 72719	
134	Upset, Breakdown and Safety Requirements.	4/11/2006, 4/5/2000, 3/20/1997	11/26/2010, 75 FR 72719	
135	Excess Emission Reports	4/11/2006, 4/5/2000, 3/20/1997	11/26/2010, 75 FR 72719	
136	Excess Emission Records	4/5/2000, 3/23/1998, 3/20/1997	1/16/2003, 68 FR 2217	
155	Circumvention	4/11/2006	11/26/2010, 75 FR 72719	
156	Total Compliance	5/1/1994	1/16/2003, 68 FR 2217	
157	Test Methods and Procedures	4/11/2015	8/12/2016, 81 FR 53290	
160	Provisions Governing Specific Activities and Conditions.	4/5/2000	1/16/2003, 68 FR 2217	
162	Modifying Physical Conditions	5/1/1994	1/16/2003, 68 FR 2217	
163	Source Density	5/1/1994	1/16/2003, 68 FR 2217	
164	Polychlorinated Biphenyls (PCBs)	5/1/1994	1/16/2003, 68 FR 2217	
175	Procedures and Requirements for Permits Establishing a Facility Emissions Cap.	4/11/2015	8/12/2016, 81 FR 53290	
176	Facility Emissions Cap	4/11/2015	8/12/2016, 81 FR 53290.	Except for provisions relating to hazardous air pollutants.
177	Application Procedures	4/11/2015	8/12/2016, 81 FR 53290	
178	Standard Contents of Permits Establishing a Facility Emissions Cap.	4/11/2015	8/12/2016, 81 FR 53290	
179	Procedures for Issuing Permits Establishing a Facility Emissions Cap.	4/11/2015	8/12/2016, 81 FR 53290	
180	Revisions to Permits Establishing a Facility Emissions Cap.	4/11/2015	8/12/2016, 81 FR 53290	
181	Notice and Recordkeeping of Estimates of Ambient Concentrations.	4/11/2015	8/12/2016, 81 FR 53290	
200	Procedures and Requirements for Permits to Construct.	3/25/2016	5/12/2017, 82 FR 22083	
201	Permit to Construct Required	4/11/2006	8/12/2016, 81 FR 53290	
202	Application Procedures	4/11/2015	8/12/2016, 81 FR 53290	
203	Permit Requirements for New and Modified Stationary Sources.	5/1/1994	1/16/2003, 68 FR 2217	Except subsection 203.03.
204	Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas.	4/2/2008, 3/30/2007, 4/6/2005, 4/5/2000, 5/1/1994	11/26/2010, 75 FR 72719	
205	Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas.	4/2/2008, 3/30/2007, 4/6/2005	11/26/2010, 75 FR 72719	
206	Optional Offsets for Permits to Construct.	4/6/2005	11/26/2010, 75 FR 72719	
207	Requirements for Emission Reduction Credit.	5/1/1994	1/16/2003, 68 FR 2217	
208	Demonstration of Net Air Quality Benefit.	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217	
209	Procedures for Issuing Permits	4/11/2006, 4/6/2005, 5/3/2003, 7/1/2002, 4/5/2000, 3/19/1999, 3/23/1998, 5/1/1994	11/26/2010, 75 FR 72719	
211	Conditions for Permits to Construct.	5/1/1994	1/16/2003, 68 FR 2217	
212	Obligation to Comply	5/1/1994	1/16/2003, 68 FR 2217	
213	Pre-Permit Construction	4/11/2006, 5/3/2003, 4/5/2000, 3/23/1998	11/26/2010, 75 FR 72719	
220	General Exemption Criteria for Permit to Construct Exemptions.	4/4/2013, 4/5/2000	3/3/2014, 79 FR 11711	
221	Category I Exemption	4/5/2000	1/16/2003, 68 FR 2217	
222	Category II Exemption	4/4/2013, 4/11/2006, 4/5/2000, 5/1/1994, 7/1/1997	3/3/2014, 79 FR 11711	

EPA APPROVED IDAHO REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
400	Procedures and Requirements for Tier II Operating Permits.	7/1/2002	11/26/2010, 75 FR 72719	
401	Tier II Operating Permit	4/11/2015	8/12/2016, 81 FR 53290.	Except 401.01.a and 401.04.
402	Application Procedures	7/1/2002, 5/1/1994, 4/5/2000, 7/1/2002	11/26/2010, 75 FR 72719	
403	Permit Requirements for Tier II Sources.	5/1/1994	1/16/2003, 68 FR 2217	
404	Procedure for Issuing Permits	4/11/2006, 4/5/2000, 5/1/1994, 7/1/2002	11/26/2010, 75 FR 72719	
405	Conditions for Tier II Operating Permits.	5/1/1994	1/16/2003, 68 FR 2217	
406	Obligation to Comply	5/1/1994	1/16/2003, 68 FR 2217	
460	Requirements for Emission Reduction Credits.	4/11/2006, 4/5/2000, 5/1/1994	11/26/2010, 75 FR 72719	
461	Requirements for Banking Emission Reduction Credits (ERC's).	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217	
500	Registration Procedures and Requirements for Portable Equipment.	5/1/1994	1/16/2003, 68 FR 2217	
510	Stack Heights and Dispersion Techniques.	5/1/1994	1/16/2003, 68 FR 2217	
511	Applicability	4/11/2006	11/26/2010, 75 FR 72719	
512	Definitions	4/11/2006, 5/1/1994, 4/5/2000	11/26/2010, 75 FR 72719	
513	Requirements	4/11/2006	11/26/2010, 75 FR 72719	
514	Opportunity for Public Hearing	5/1/1994	1/16/2003, 68 FR 2217	
515	Approval of Field Studies and Fluid Models.	5/1/1994	1/16/2003, 68 FR 2217	
516	No Restriction on Actual Stack Height.	5/1/1994	1/16/2003, 68 FR 2217	
550	Air Pollution Emergency Rule	5/1/1994	1/16/2003, 68 FR 2217	
551	Episode Criteria	5/1/1994	1/16/2003, 68 FR 2217	
552	Stages	3/15/2002, 5/1/1994	1/16/2003, 68 FR 2217	
553	Effect of Stages	3/15/2002	1/16/2003, 68 FR 2217	
556	Criteria for Defining Levels Within Stages.	3/15/2002, 4/5/2000	1/16/2003, 68 FR 2217	
557	Public Notification	5/1/1994	1/16/2003, 68 FR 2217	
558	Information To Be Given	3/15/2002, 5/1/1994	1/16/2003, 68 FR 2217	
559	Manner and Frequency of Notification.	5/1/1994	1/16/2003, 68 FR 2217	
560	Notification to Sources	4/11/2006	11/26/2010, 75 FR 72719	
561	General Rules	4/11/2006, 5/1/1994, 3/15/2002	11/26/2010, 75 FR 72719	
562	Specific Emergency Episode Abatement Plans for Point Sources.	5/1/1994	1/16/2003, 68 FR 2217	
563	Transportation Conformity	3/30/2001	4/12/2001, 66 FR 18873	
564	Incorporation by Reference	3/30/2001	4/12/2001, 66 FR 18873	
565	Abbreviations	3/30/2001	4/12/2001, 66 FR 18873	
566	Definitions for the Purpose of Sections 563 Through 574 and 582.	3/30/2001	4/12/2001, 66 FR 18873	
567	Agencies Affected by Consultation	3/30/2001	4/12/2001, 66 FR 18873	
568	ICC Member Roles in Consultation	3/30/2001	4/12/2001, 66 FR 18873	
569	ICC Member Responsibilities in Consultation.	3/30/2001	4/12/2001, 66 FR 18873	
570	General Consultation Process	3/30/2001	4/12/2001, 66 FR 18873	
571	Consultation Procedures	3/30/2001	4/12/2001, 66 FR 18873	
572	Final Conformity Determinations by USDOT.	3/30/2001	4/12/2001, 66 FR 18873	
573	Resolving Conflicts	3/30/2001	4/12/2001, 66 FR 18873	

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State citation	Title/subject	State effective date	EPA approval date	Explanations
574	Public Consultation Procedures	3/30/2001	4/12/2001, 66 FR 18873	
575	Air Quality Standards and Area Classification.	4/11/2006	11/26/2010, 75 FR 72719	
576	General Provisions for Ambient Air Quality Standards.	5/1/1994	1/16/2003, 68 FR 2217	
578	Designation of Attainment, Unclassifiable, and Nonattainment Areas.	5/1/1994	1/16/2003, 68 FR 2217	
579	Baselines for Prevention of Significant Deterioration.	4/11/2015	8/12/2016, 81 FR 53290	
580	Classification of Prevention of Significant Deterioration Areas.	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217	
581	Prevention of Significant Deterioration (PSD) Increments.	10/6/2010, 4/11/2006, 7/1/1997, 5/1/1994	7/17/2012, 77 FR 41916	
600	Rules for Control of Open Burning	4/2/2008	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
601	Fire Permits, Hazardous Materials and Liability.	4/2/2008	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
602	Nonpreemption of Other Jurisdictions.	4/2/2008	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
603	General Restrictions	4/2/2008, 3/21/2003, 5/1/1994	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
606	Categories of Allowable Burning	4/2/2008	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
607	Recreational and Warming Fires	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
608	Weed Control Fires	5/1/1994	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
609	Training Fires	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
610	Industrial Flares	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
611	Residential Solid Waste Disposal Fires.	5/1/1994	1/16/2003, 68 FR 2217	
612	Landfill Disposal Site Fires	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
613	Orchard Fires	3/21/2003, 5/1/1994	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
614	Prescribed Burning	5/1/1994	1/16/2003, 68 FR 2217	
615	Dangerous Material Fires	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
616	Infectious Waste Burning	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA Approval Date of 7/11/2005 removed in response to 9th Circuit remand.
617	Crop Residue	7/1/2011, 4/2/2008	3/19/2013, 78 FR 16790	
618	Permit By Rule	7/1/2011, 4/2/2008	3/19/2013, 78 FR 16790	
619	Registration for Permit By Rule	4/2/2008	8/1/2008, 73 FR 44915	
620	Burn Fee	4/11/2019	12/9/2019, 84 FR 67189	
621	Burn Determination	2/28/2018, 4/2/2008	6/19/2018, 83 FR 28382; 8/1/2008, 73 FR 44915	
622	General Provisions	7/1/2011, 4/2/2008	3/19/2013, 78 FR 16790	
623	Public Notification	7/1/2011, 4/2/2008	3/19/2013, 78 FR 16790	

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State citation	Title/subject	State effective date	EPA approval date	Explanations
624	Spot Burn, Baled Agricultural Residue Burn, and Propane Flaming Permits.	7/1/2011	3/19/2013, 78 FR 16790	
625	Visible Emissions	4/2/2008	8/1/2008, 73 FR 44915	
626	General Restrictions on Visible Emissions from Wigwam Burners.	4/5/2000	1/16/2003, 68 FR 2217	
650	Rules for Control of Fugitive Dust	5/1/1994	1/16/2003, 68 FR 2217	
651	General Rules	3/30/2007, 5/1/1994	6/9/2011, 76 FR 33647	
665	Regional Haze Rules	3/30/2007	6/9/2011, 76 FR 33647	
666	Reasonable Progress Goals	3/30/2007	6/9/2011, 76 FR 33647	
667	Long-Term Strategy for Regional Haze.	3/30/2007	6/9/2011, 76 FR 33647	
668	BART Requirement for Regional Haze.	3/30/2007	6/9/2011, 76 FR 33647	
675	Fuel Burning Equipment—Particulate Matter.	4/5/2000	1/16/2003, 68 FR 2217	
676	Standards for New Sources	5/1/1994	1/16/2003, 68 FR 2217	
677	Standards for Minor and Existing Sources.	5/1/1994	1/16/2003, 68 FR 2217	
678	Combinations of Fuels	5/1/1994	1/16/2003, 68 FR 2217	
679	Averaging Period	4/11/2006, 5/1/1994	11/26/2010, 75 FR 72719	
680	Altitude Correction	5/1/1994	1/16/2003, 68 FR 2217	
681	Test Methods and Procedures	4/5/2000	1/16/2003, 68 FR 2217	
700	Particulate Matter Process Weight Limitations.	5/3/2003, 4/5/2000	11/26/2010, 75 FR 72719	
701	Particulate Matter—New Equipment Process Weight Limitations.	4/5/2000	1/16/2003, 68 FR 2217	
702	Particulate Matter—Existing Equipment Process Weight Limitations.	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217	
703	Particulate Matter—Other Processes.	4/5/2000	1/16/2003, 68 FR 2217	
725	Rules for Sulfur Content of Fuels	4/11/2015	8/12/2016, 81 FR 53290	
785	Rules for Control of Incinerators	5/1/1994	1/16/2003, 68 FR 2217	
786	Emission Limits	4/5/2000	1/16/2003, 68 FR 2217	
787	Exceptions	3/23/1998	1/16/2003, 68 FR 2217	
790	Rules for the Control of Nonmetallic Mineral Processing Plants.	3/15/2002	8/12/2016, 81 FR 53290.	
791	General Control Requirements	3/15/2002	8/12/2016, 81 FR 53290	
793	Emissions Standards for Nonmetallic Mineral Processing Plants not Subject to 40 CFR 60, Subpart OOO.	3/15/2002	8/12/2016, 81 FR 53290	
794	Permit Requirements	4/11/2015	8/12/2016, 81 FR 53290.	Except Section 794.04.
795	Permit by Rule Requirements	3/15/2002	8/12/2016, 81 FR 53290	
796	Applicability	3/15/2002	8/12/2016, 81 FR 53290	
797	Registration for Permit by Rule	3/15/2002	8/12/2016, 81 FR 53290	
798	Electrical Generators	3/15/2002	8/12/2016, 81 FR 53290	
799	Nonmetallic Mineral Processing Plan Fugitive Dust Best Management Practice.	3/15/2002	8/12/2016, 81 FR 53290	
805	Rules for Control of Hot-mix Asphalt Plants.	5/1/1994	1/16/2003, 68 FR 2217	
806	Emission Limits	5/1/1994	1/16/2003, 68 FR 2217	
807	Multiple Stacks	5/1/1994	1/16/2003, 68 FR 2217	
808	Fugitive Dust Control	5/1/1994	1/16/2003, 68 FR 2217	
815	Rules for Control of Kraft Pulp Mills.	3/29/2012	4/8/2019, 84 FR 13803	
818	Kraft Pulp Mill LVHC and HVLC Gas Venting Notification and Reporting.	3/29/2012	4/8/2019, 84 FR 13803	

EPA APPROVED IDAHO REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
845	Rules for Control of Sulfur Oxide Emissions from Sulfuric Acid Plants.	5/1/1994	1/16/2003, 68 FR 2217	
846	Emission Limits	4/5/2000	1/16/2003, 68 FR 2217	
847	Monitoring and Testing	4/5/2000	1/16/2003, 68 FR 2217	
848	Compliance Schedule	5/1/1994	1/16/2003, 68 FR 2217	
City and County Ordinances				
City of Sandpoint Ordinance No. 939.	Material Specifications for Street Sanding Material.	2/22/1994 (City adoption date)	6/26/2002, 67 FR 43006.	Sandpoint PM_{10} Nonattainment Area Plan.
City of Sandpoint Chapter 8 Air Quality (4–8–1 through 4–8–14).	Solid Fuel Heating Appliances	9/21/2011 (City adoption date)	4/3/2013, 78 FR 20001	Codified version of City of Sandpoint Ordinance No. 965 as amended by Ordinance No. 1237 and Ordinance No. 1258. Sandpoint PM_{10} Limited Maintenance Plan.
Ada County Ordinance.	The 1999 Motor Vehicle Emissions Control Ordinance.	6/15/1999 (County approval date)	10/28/2002, 67 FR 65713.	Northern Ada County CO Maintenance Plan.
City of Boise Ordinance.	The 1999 Motor Vehicle Emissions Control Ordinance.	7/20/1999 (City approval date)	10/28/2002, 67 FR 65713.	Northern Ada County CO Maintenance Plan.
City of Eagle Ordinance.	The 1999 Motor Vehicle Emissions Control Ordinance.	4/27/1999 (City approval date)	10/28/2002, 67 FR 65713.	Northern Ada County CO Maintenance Plan.
City of Garden City Ordinance.	The 1991 Vehicle Emission Control Ordinance.	8/13/1996 (Most recently amended)	10/28/2002, 67 FR 65713.	Northern Ada County CO Maintenance Plan.
City of Meridian Ordinance.	The 1999 Motor Vehicle Emissions Control Ordinance.	6/1/1999 (City approval date)	10/28/2002, 67 FR 65713.	Northern Ada County CO Maintenance Plan.
Boise City Ordinance 4432.	Parking Permits	8/13/1979 (City approval date)	6/6/1985, 50 FR 23810	Transportation Control Plan for carbon monoxide, Ada County.
City of Garden City Ordinance 514, 533, and 624.	Solid Fuel Heating Appliance Ordinance of the City of Garden City, Idaho.	5/14/1987, 1/10/1989, 9/13/1994 (City approval dates)	5/30/1996, 61 FR 27019.	Northern Ada County PM_{10} Nonattainment Area Plan.
Meridian Ordinance 667.	Meridian Clean Air Ordinance	8/16/1994 (City approval date)	5/30/1996, 61 FR 27019.	Northern Ada County PM_{10} Nonattainment Area Plan.
City of Eagle Ordinance 245.	City of Eagle Clean Air Ordinance	4/26/1994 (City approval date)	5/30/1996, 61 FR 27019.	Northern Ada County PM_{10} Nonattainment Area Plan.
Ada County Ordinance 254.	Ada County Clean Air Ordinance	11/3/1992 (County adoption date)	5/30/1996, 61 FR 27019.	Northern Ada County PM_{10} Nonattainment Area Plan.
Table: Ordinance-1	Explanation of enforcement procedures, responsibilities and sources of funding for the Northern Ada County Wood Burning Control Ordinances.	12/30/1994 (date of table)	5/30/1996, 61 FR 27019.	Northern Ada County PM_{10} Nonattainment Area Plan.
City of Pocatello Ordinance 2450.	Residential wood combustion curtailment ordinance.	1/12/1994	7/13/2006, 71 FR 39574.	(Portneuf Valley Nonattainment Area Plan and Maintenance Plan).
City of Pocatello Ordinance 2726.	Revised air quality curtailment levels.	9/18/2003	7/13/2006, 71 FR 39574.	(Portneuf Valley Nonattainment Area Plan and Maintenance Plan).
City of Chubbuck Ordinance 403.	Residential wood combustion curtailment ordinance.	11/23/1993	7/13/2006, 71 FR 39574.	(Portneuf Valley Nonattainment Area Plan and Maintenance Plan).
City of Chubbuck Ordinance 582.	Revised air quality curtailment levels.	12/9/2003	7/13/2006, 71 FR 39574.	(Portneuf Valley Nonattainment Area Plan and Maintenance Plan).
City of Clifton Ordinance No. 120.	Ordinance No. 120	8/11/2012	3/25/2014, 79 FR 16201.	Except Section 9 (Penalty).
City of Dayton Ordinance #287.	Ordinance #287	8/8/2012	3/25/2014, 79 FR 16201.	Except Section 9 (Penalty).
Franklin City Ordinance No. 2012–9–12.	Solid Fuel Heating Appliances	9/12/2012	3/25/2014, 79 FR 16201.	Except Section 9 (Penalty).
Franklin County Ordinance No. 2012–6–25.	Solid Fuel Heating Appliances	6/25/2012	3/25/2014, 79 FR 16201.	Except Section 9 (Penalty).
City of Oxford Memorandum of Understanding.	Solid Fuel Heating Appliances	10/22/2012	3/25/2014, 79 FR 16201.	Except #2 of the MOA and Section 9 of Exhibit A.
City of Preston Ordinance No. 2012–1.	Ordinance No. 2012–1	6/11/2012	3/25/2014, 79 FR 16201.	Except Section 9 (Penalty).

EPA APPROVED IDAHO REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
City of Weston Ordinance No. 2012–01.	Ordinance No. 2012–01	8/1/2012	3/25/2014, 79 FR 16201.	Except Section 9 (Penalty).
State Statutes				
Section 4 of Senate Bill 1024, codified at Idaho Code section 39–114.	Open Burning of Crop Residue	2/28/2018	12/9/2019, 84 FR 67189	

(d) EPA approved State Source-specific requirements.

EPA APPROVED IDAHO SOURCE-SPECIFIC REQUIREMENTS [1]

Name of source	Permit No.	State effective date	EPA approval date	Explanation
LP Wood Polymers, Inc., Meridian, Idaho.	001–00115	7/12/2002	10/27/2003, 68 FR 61106.	The following conditions: 1.1, 1.3, 3.1, and the Appendix. (Boise/Ada County Maintenance Plan).
Consolidated Concrete Company, Boise, Idaho.	001–00046	12/3/2001	10/27/2003, 68 FR 61106.	The following conditions: 1.1, 1.3, 2.3, 3.1, 3.2, and the Appendix. (Boise/Ada County Maintenance Plan).
Crookham Company, Caldwell, Idaho.	027–00020	1/18/2002	10/27/2003, 68 FR 61106.	The following conditions: 1.1, 1.3, 2.1, 2.3, 3.1, 3.1.1, 3.1.2, 3.2, and the Appendix. (Boise/Ada County Maintenance Plan).
Double D Service Center, Meridian, Idaho.	001–00168	2/4/2002	10/27/2003, 68 FR 61106.	The following conditions: 1.1, 1.3, 3.1, 3.2.1, 3.2.2, 3.2.3, and the Appendix. (Boise/Ada County Maintenance Plan).
Plum Creek Northwest Lumber, Inc., Meridian, Idaho.	001–00091	7/12/2002	10/27/2003, 68 FR 61106.	The following conditions: 1.1, 1.3, 2.1.2, 3.1, and the Appendix. (Boise/Ada County Maintenance Plan).
C. Wright Construction, Inc., Meridian, Idaho.	T2–000033	7/8/2003	10/27/2003, 68 FR 61106.	The following conditions: 2 (heading only), 2.5, (2.12, Table 2.2 as it applies to PM_{10}), 2.14, 3 (heading only), 3.3, Table 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.10, 4 (heading only), 4.2, 4.3, 4.4, 4.7, 5, and Table 5.1. (Boise/Ada County Maintenance Plan).
Nelson Construction Co., Boise, Idaho.	T2–020029	7/21/2003	10/27/2003, 68 FR 61106.	The following conditions: 2 (heading only), 2.12, 2.14, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.9, 3.10, 3.11, 3.12, 4 (heading only), 4.3, 4.4, 4.5, 4.6, 5, and Table 5.1. (Boise/Ada County Maintenance Plan).
Mike's Sand and Gravel, Nampa, Idaho.	001–00184	7/12/2002	10/27/2003, 68 FR 61106.	The following conditions: 1.1, 1.3, 2.2.1, 3.1, and the Appendix. (Boise/Ada County Maintenance Plan).
Idaho Concrete Co., Eagle, Idaho.	T2–020031	7/8/2003	10/27/2003, 68 FR 61106.	The following conditions: 2 (heading only), 2.5, 2.13, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.8, 4 (heading only), and Table 4.1. (Boise/Ada County Maintenance Plan).
Idaho Concrete Co., Eagle, Idaho.	T2–020032	7/8/2003	10/27/2003, 68 FR 61106.	The following conditions: 2 (heading only), 2.5, 2.13, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.8, 4 (heading only), and Table 4.1. (Boise/Ada County Maintenance Plan).

EPA APPROVED IDAHO SOURCE-SPECIFIC REQUIREMENTS [1]—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Idaho Concrete Co. Eagle, Idaho.	T2–020033	7/8/2003	10/27/2003, 68 FR 61106.	The following conditions: 2 (heading only), 2.5, 2.13, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.8, 4 (heading only), and Table 4.1. (Boise/Ada County Maintenance Plan).
The Amalgamated Sugar Company LLC, Nampa, Idaho.	027–00010	9/30/2002	10/27/2003, 68 FR 61106 and 11/1/2004, 69 FR 63324.	The following conditions: 2 (heading only), (2.7, Table 2.2 as it applies to PM_{10},) 2.10, 2.10.1, 2.10.2, 2.11, 2.11.1, 2.11.2, 2.11.3, 2.11.4, 2.11.5, 2.12, 2.12.1, 2.12.2, 2.12.3, 2.13, 2.13.1, 2.13.2, 2.13.3, 2.14, 2.14.1, 2.14.2, 2.16, 3 (heading only), (3.3, Table 3.2 as it applies to PM_{10}), 3.5, 3.7, 3.8, 3.8.1, 3.8.2, 3.8.3, 3.8.4, 3.8.5, 3.8.6, 3.8.7, 3.8.8, 3.9, 4 (heading only), (4.3, Table 4.1 as it applies to PM_{10}), 4.5, 4.6, 4.7, 5 (heading only), (5.3, Table 5.3 as it applies to PM_{10}), 5.5, 5.9, 5.9.1, 5.9.2, 5.9.3, 5.9.4, 5.9.5, 5.9.6, 5.9.7, 5.9.8, 5.9.9, 5.10, 5.11, 6 (heading only), 6.3, Table 6.1, 6.5, 6.6, 6.7, 6.7.1, 6.7.2, 6.8, 7 (heading only), 7.3, Table 7.1 as it applies to PM_{10}, 7.5, 7.7, 7.7.1, 7.7.2, 7.8, 8 (heading only), 8.3, Table 8.1, 8.5, 8.7, 8.7.1, 8.7.2, 8.8, 9 (heading only), 9.3, Table 9.1, 9.5, 9.7, 9.7.1, 9.7.2, 9.8, 10 (heading only), 10.3, Table 10.1, 10.6, 10.8, 10.8.1, 10.8.2, 10.9, 11 (heading only), 11.3, Table 11.2, 11.6, 11.8, 11.8.1, 11.8.2, 11.9, 12 (heading only), 12.3, Table 12.1, 12.5, 12.7, 12.7.1, 12.7.2, 12.8, 13 (heading only), 13.1 (except as it applies to condition 13.3, 13.3.1, 13.3.2, 13.5, 13.5.1, 13.5.2, 13.5.3, 13.6, 13.6.1, 13.6.2 and 13.9), Table 13.1 (except conditions 13.3, 13.5 and 13.6), (13.2, Table 13.2 as it applies to PM_{10}), 13.2.1, 13.4, 13.4.1, 13.4.2, 13.4.3, 13.7, 13.7.1, 13.7.2, 13.8, 13.8.1, 13.8.2, 13.8.3, 13.10, and 13.11. (Boise/Ada County PM_{10} Maintenance Plan).
Lake Pre-Mix, Sandpoint, Idaho.	777–00182	5/17/1996	6/26/2002, 67 FR 43006.	The following conditions for the cement silo vent: 1.1, 2.1.1, 2.1.2, 3.1.1, and 3.1.2. (Sandpoint nonattainment area plan).
Interstate Concrete and Asphalt, Sandpoint, Idaho.	017–00048	8/2/1999	6/26/2002, 67 FR 43006.	The following conditions: for the asphalt plant, 2.2, 3.1.1, 4.1, 4.1.1, 4.1.2, 4.2.1 (as it applies to the hourly PM_{10} emission limit in Appendix A), 4.2.2, 4.2.2.1, 4.2.2.2, and 4.2.2.3; for the concrete batch plant, 2.1, 3.1.1, 4.1, 4.1.1, and 4.1.2; Appendix A (as it applies to PM_{10} emission rates after 7/1/96) and Appendix B (as it applies after 7/1/96). (Sandpoint nonattainment area plan).

EPA APPROVED IDAHO SOURCE-SPECIFIC REQUIREMENTS [1]—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Whiteman Lumber Company, Cataldo, ID.	13–1420–062	7/16/1979 (date issued)	7/28/1982, 47 FR 32530.	Silver Valley TSP Nonattainment Area Plan.
Potlatch Corporation, Pulp and Paper Unit, Lewiston, ID.	13–1140–0001–00	7/5/1979 (date issued)	7/28/1982, 47 FR 32530.	Lewiston TSP Nonattainment Area Plan.
Potlatch Corporation, Clearwater Unit, Lewiston, ID.	13–1140–0003	7/5/1979 (date issued)	7/28/1982, 47 FR 32530.	Lewiston TSP Nonattainment Area Plan.
Coast Trading Company, Inc., Lewiston, ID.	13–1140–0011	6/29/1979 (date issued)	7/28/1982, 47 FR 32530.	Lewiston TSP Nonattainment Area Plan.
Lewis-Clark Terminal Association, Lewiston, ID.	13–1140–0010	6/29/1979 (date issued)	7/28/1982, 47 FR 32530.	Lewiston TSP Nonattainment Area Plan.
Poe Asphalt, Lewiston, ID.	0880–0008	3/1/1976 (effective date)	7/28/1982, 47 FR 32530.	Lewiston TSP Nonattainment Area Plan.
FMC Corporation, Pocatello, ID [2].	13–1260–0005	2/26/1980 (date issued)	7/28/1982, 47 FR 32530.	Pocatello TSP Nonattainment Area Plan.
J.R. Simplot, Pocatello, ID.	13–1260–0006–00	3/4/1980 (date issued)	7/28/1982, 47 FR 32530.	Pocatello TSP Nonattainment Area Plan.
Idaho Portland Cement Company, Inkom, ID.	13–0080–0004–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530.	Pocatello TSP Nonattainment Area Plan.
J.R. Simplot Company, Conda, ID.	13–0420–0021–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530.	Soda Springs TSP Nonattainment Area Plan.
Beker Industries, Conda, ID.	13–0420–0003–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530.	Soda Springs TSP Nonattainment Area Plan.
Monsanto, Soda Springs, ID.	13–0420–0001–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530.	Soda Springs TSP Nonattainment Area Plan.
Kerr McGee, Soda Springs, ID.	13–0420–0002–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530.	Soda Springs TSP Nonattainment Area Plan.
J.R. Simplot, Pocatello, Idaho.	Air Pollution Operating Permit No. T1–9507–114–1; Facility Number No. 077–00006.	4/5/2004	7/13/2006, 71 FR 39574.	The following conditions: Cover page, facility identification information only, #300 Sulfuric Acid Plant, Permit Conditions 16.1, 16.10, 16.11, #400 Sulfuric Acid Plant, Permit Condition 17.1, 17.7, 17.10, 17.11, Phosphoric acid plant, Permit Condition 12.3, 12.13, Granulation No. 3 Process, Permit Condition 9.2.1, Granulation No. 3 stack, 9.17 (except 9.17.1 through 9.17.6), Reclaim Cooling Towers, Permit Condition 14.2, 14.6.1, Babcock & Wilcox Boiler, Permit Condition 6.4, 6.12, HPB&W Boiler, Permit Condition 5.3, 5.13 through 5.18, 5.21.
J.R. Simplot, Pocatello, Idaho.	Compliance Agreement & Voluntary Order Idaho Code 39–116A.	4/16/2004	7/13/2006, 71 FR 39574.	The following conditions: No. 300 Sulfuric Acid Plant; Condition 8 and 9. No. 400 Sulfuric Acid Plant; Condition 10, 11, and 12. Granulation No.1 Plant; Condition 14. Granulation No.2 Plant; Condition 15. Compliance and Performance Testing; Condition 16.
The Amalgamated Sugar Company LLC—Nampa Factory, Nampa, Idaho.	T2–2009.0105	12/23/2011 (date issued)	4/28/2014, 79 FR 23273.	The following conditions: 1.2, including the table of Regulated Emission Point Sources Table, 3.2, 3.3 (first paragraph only), 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.11, 3.13, 3.14, 3.15, 3.16, and 4.1.

EPA APPROVED IDAHO SOURCE-SPECIFIC REQUIREMENTS [1]—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanation
P4 Production, L.L.C., Soda Springs, Idaho.	T2–2009.0109	11/17/2009 (date issued)	6/22/2011, 76 FR 36329.	The following conditions: 1.2 (including Table 1.1), 2.3, 2.4, 2.5, 2.6, 2.7, and 2.8. (Regional Haze SIP Revision).

[1] EPA does not have the authority to remove these source-specific requirements in the absence of a demonstration that their removal would not interfere with attainment or maintenance of the NAAQS, violate any prevention of significant deterioration increment or result in visibility impairment. Idaho Department of Environmental Quality may request removal by submitting such a demonstration to EPA as a SIP revision.

[2] Only a small portion of this facility is located on State lands. The vast majority of the facility is located in Indian Country. It is EPA's position that unless EPA has explicitly approved a program as applying in Indian country, State or local regulations or permits are not effective within the boundaries of that Indian country land for purposes of complying with the CAA. 68 FR 2217, 2220 (January 16, 2003).

* * * * *

[FR Doc. 2020–15395 Filed 7–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2019–0392; FRL–10008–48–OAR]

RIN 2060–AT07

National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Rubber Tire Manufacturing source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action to add electronic reporting of performance test results and reports, compliance reports, and Notification of Compliance Status (NOCS) reports and to remove the provision that exempts emissions from compliance with the standards during periods of startup, shutdown, and malfunction (SSM). These amendments are made under the authority of the Clean Air Act (CAA) and will improve effectiveness of the rule. The amendments are environmentally neutral.

DATES: This final rule is effective on July 24, 2020.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0392. All documents in the docket 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 electronically through *https://www.regulations.gov/.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. There is a temporary suspension of mail delivery to the EPA, and no hand deliveries are currently accepted. For further information and updates on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Korbin Smith, 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) 541–2416; fax number: (919) 541–4991; and email address: *smith.korbin@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. James Hirtz, 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) 541–0881; and email address: *hirtz.james@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 Avenue 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:

CAA Clean Air Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
EPA Environmental Protection Agency
HAP hazardous air pollutants(s)
ICR information collection request
MACT maximum achievable control technology
NESHAP national emission standards for hazardous air pollutants
NOCS Notification of Compliance Status
NTTAA National Technology Transfer and Advancement Act
PRA Paper Reduction Act
RFA Regulatory Flexibility Act
RIN Regulatory Information Number
RTO regenerative thermal oxidizer
RTR Risk and Technology Review
SSM startup, shutdown, and malfunction
tpy tons per year
UMRA Unfunded Mandates Reform Act
VOC volatile organic compound(s)

Background information. On October 30, 2019 the EPA proposed revisions to the Rubber Tire Manufacturing NESHAP based on the RTR. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule 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 Rubber Tire Manufacturing Residual Risk and Technology Review,* Docket ID No. EPA–HQ–OAR–2019–0392. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background
A. What is the statutory authority for this action?
B. What is the Rubber Tire Manufacturing source category and how does the NESHAP regulate HAP emissions from the source category?
C. What changes did we propose for the Rubber Tire Manufacturing source category in our October 30, 2019, proposal?
III. What is included in this final rule?
A. What are the final rule amendments based on the risk review for the Rubber Tire Manufacturing source category?
B. What are the final rule amendments based on the technology review for the Rubber Tire Manufacturing source category?
C. What are the final rule amendments addressing emissions during periods of SSM?
D. What other changes have been made to the NESHAP?
E. What are the effective and compliance dates of the standards?
IV. What is the rationale for our final decisions and amendments for the Rubber Tire Manufacturing source category?
A. Residual Risk Review for the Rubber Tire Manufacturing Source Category
B. Technology Review for the Rubber Tire Manufacturing Source Category
C. SSM Provisions
D. Electronic Reporting
V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
A. What are the affected facilities?
B. What are the air quality impacts?
C. What are the cost impacts?
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F. What analysis of environmental justice did we conduct?
G. What analysis of children's environmental health did we conduct?
VI. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

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 and source category	NAICS [1] code
40 CFR part 63, subpart XXXX, Rubber Tire Manufacturing	326211, 326212, 314992

[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 category 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 this 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/rubber-tire-manufacturing-national-emission-standards-hazardous-air.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

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 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 22, 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 reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or 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* 84 FR 58268.

B. What is the Rubber Tire Manufacturing source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Rubber Tire Manufacturing NESHAP on July 9, 2002 (67 FR 45588). The standards are codified at 40 CFR part 63, subpart XXXX. The rubber tire manufacturing industry consists of facilities that produce components of rubber tires, which include, but are not limited to, rubber compounds, sidewalls, tread, tire beads, tire cord, and liners. The source category covered by this MACT standard currently includes 21 facilities.

The Rubber Tire Manufacturing source category is subcategorized into four subcategories, which include rubber processing, tire production, tire cord production, and puncture sealant application.

Emissions limits in the 2002 NESHAP for the Rubber Tire Manufacturing source category were set for each subcategory separately:

1. Rubber Processing

There are no emission limits for rubber processing affected sources.

2. Tire Production

There are two options for compliance under this subcategory. The first is a HAP constituent option that requires that emissions of each HAP in Table 16 to 40 CFR part 63, subpart XXXX, not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total cements and solvents used at the tire production affected source, and that emissions of each HAP not in Table 16 to 40 CFR part 63, subpart XXXX, not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total cements and solvents used at the tire production affected source.

The second emission limit option is a production-based option. For this option, emissions of HAP must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber used at the tire production affected source.

3. Tire Cord Production

There are three options for compliance under this subcategory, depending, in part, on whether the source is an existing or new source. The first option is a production-based option for existing tire cord production affected sources. As part of this option, emissions must not exceed 280 grams HAP per megagram (0.56 pounds per ton) of fabric processed at the tire cord production affected source.

The second option is a production-based option for new or reconstructed tire cord production affected sources. As part of this option, emissions must not exceed 220 grams HAP per megagram (0.43 pounds per ton) of fabric processed at the tire cord production affected source.

The third option is a HAP constituent option available to both existing and new or reconstructed tire cord production affected sources. As part of this option, emissions of each HAP in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total coatings used at the tire cord production affected source, and emissions of each HAP not in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total coatings used at the tire cord production affected source.

4. Puncture Sealant Application

There are three options for compliance under this subcategory, again depending, in part, on whether the source is an existing or new source. The first option is a percent reduction option for existing puncture sealant application spray booths. As part of this option, facilities are required to reduce spray booth HAP (measured as volatile organic compounds (VOC)) emissions by at least 86 percent by weight.

The second option is a percent reduction option for new or reconstructed puncture sealant application spray booths. As part of this option, facilities are required to reduce spray booth HAP (measured as VOC) emissions by at least 95 percent by weight.

The third option is a HAP constituent option for both existing and new or reconstructed puncture sealant

[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.'').

application spray booths. As part of this option, emissions of each HAP in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total puncture sealants used at the puncture sealant affected source, and emissions of each HAP not in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total puncture sealants used at the puncture sealant affected source.

5. Alternatives for Meeting Emission Limits

The three subcategories subject to emission limits (tire production, tire cord production, and puncture sealant application) offer compliance alternatives to meet the above-mentioned emission limits. For more information, a detailed breakdown of the subcategory alternatives can be found in 40 CFR 63.5985, 40 CFR 63.5987, and 40 CFR 63.5989.

C. What changes did we propose for the Rubber Tire Manufacturing source category in our October 30, 2019, proposal?

On October 30, 2019, the EPA published a proposed rule in the **Federal Register** for the Rubber Tire Manufacturing NESHAP, 40 CFR part 63, subpart XXXX, that took into consideration the RTR analyses. In the proposed rule, we determined that it was not necessary to revise the standard pursuant to the technology or risk reviews. However, we did propose revisions to the SSM provisions of the MACT rule in order to ensure that the regulations are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008). This decision vacated two provisions in the EPA's ''General Provisions'' implementing CAA section 112 at 40 CFR part 63, subpart A, that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. In addition, we proposed to require electronic submittal of the NOCS report, performance test reports, and compliance reports for rubber tire manufacturing facilities.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Rubber Tire Manufacturing source category that it is not necessary to revise the standard pursuant to the technology and risk reviews. This actions also finalizes the removal of the SSM exemption and the addition of electronic reporting.

A. What are the final rule amendments based on the risk review for the Rubber Tire Manufacturing source category?

The EPA proposed no changes to the 40 CFR part 63, subpart XXXX, NESHAP based on the risk review conducted pursuant to CAA section 112(f). We are finalizing our proposed determination that risks from the source category following implementation of MACT standards are acceptable, considering all the health information and factors evaluated, and risk estimation uncertainty. We are also finalizing our proposed determination that the existing NESHAP provides an ample margin of safety to protect public health and to prevent an adverse environmental effect. The EPA received no new data or other information during the public comment period that affected our determinations. Therefore, we are not making any revisions to the existing standards, pursuant to CAA section 112(f), and we are readopting the existing standards.

B. What are the final rule amendments based on the technology review for the Rubber Tire Manufacturing source category?

We determined that there are no developments in practices, processes, and control technologies. Therefore, we are not revising the MACT standards under CAA section 112(d)(6).

C. What are the final rule amendments addressing emissions during periods of SSM?

We are finalizing the proposed amendments to the Rubber Tire Manufacturing source category 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.D.1 of the proposal preamble (84 FR 58268, October 30, 2019), we proposed to remove the SSM exemptions for the Rubber Tire Manufacturing source category and require that the standards apply at all times (*see* 40 CFR 63.5990(a)), consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008).

Further, the EPA is not establishing standards for malfunctions. As discussed in the October 30, 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 the action, 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.D.1.a of the 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 source could take in the unlikely event that a source fails to comply with the applicable CAA section 112(d) 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.

As is explained in more detail below, we are finalizing revisions to the General Provisions table to 40 CFR part 63, subpart XXXX, to eliminate requirements that include rule language providing an exemption for periods of SSM. We are also making an additional conforming change to Table 17 of the corresponding line for 40 CFR 63.7(e)(1), and have removed the proposed 180 day compliance period for removal of the vacated general provisions SSM exemption in 40 CFR 63.6(f)(1). 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, as explained further below. Finally, we are finalizing our proposal to revise the compliance report and related records as they relate to malfunctions, as further described below. As discussed in the proposal preamble, these revisions are consistent with the requirement in 40 CFR 63.5990(a), that the standards apply at all times. Refer to sections III.C.1 through 5 of the proposal preamble for a detailed discussion of these amendments.

D. What other changes have been made to the NESHAP?

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners

and operators of facilities in the Rubber Tire Manufacturing source category submit electronic copies of certain required performance test reports, compliance reports, and NOCS reports through the EPA's Central Data Exchange (CDX) website. 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.

Based on comments received during the comment period, the EPA is modifying the compliance report provision. The regulations currently require sources to report the emission limit option and the compliance alternative that they have chosen to meet for each affected source. In the final rule, we are allowing facilities to report the emission limit option and compliance alternative at the facility level rather than for each affected source, if the same emission limit option and compliance alternative is used across all affected sources at the facility that are subject to the NESHAP. This change is reflected at 40 CFR 63.6010(c)(7).

We are finalizing a change from proposal to 40 CFR 63.6010(d) and 40 CFR 63.6010(d)(2) to correct typographical errors, and further clarify the requirements for reporting deviations in the compliance report.

Lastly, while the electronic reporting template is not part of the final rule, we note that we are adding a column to the template titled ''actions taken to minimize emissions in accordance with § 63.5990,'' to correspond with 40 CFR 63.6010(d)(3). While stated correctly in the preamble to the proposed rule, it was accidently omitted from the electronic reporting template. We are also modifying the template, consistent with the change to 40 CFR 63.6010(c)(7) to specify that facilities may report the emission limit option and compliance alternative at the facility level rather than for each affected source, if the same emission limit option and compliance alternative is used across all affected sources at the facility that are subject to the NESHAP.

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 24, 2020.

The compliance date for existing affected sources in the Rubber Tire Manufacturing source category is January 20, 2021, with the exception of the electronic format for submitting the compliance reports, and the vacated SSM exemption contained in 40 CFR 63.6(f)(1). We are revising Table 17 to clarify that for all affected sources, the vacated SSM exemption does not apply following the Court vacatur in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008).

For the electronic format for submitting compliance reports, both existing and new affected sources will have 1 year after the electronic reporting templates are available on CEDRI, or 1 year after July 24, 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 58268).

IV. What is the rationale for our final decisions and amendments for the Rubber Tire Manufacturing source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, 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 docket.

A. Residual Risk Review for the Rubber Tire Manufacturing Source Category

1. What did we propose pursuant to CAA section 112(f) for the Rubber Tire Manufacturing source category?

Pursuant to CAA section 112(f), the EPA conducted a risk review and presented the results for the review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the October 30, 2019, proposed rule for the Rubber Tire Manufacturing source category (84 FR 58268). The results of the risk assessment are presented briefly in Table 2 of this preamble and in the risk report titled *Residual Risk Assessment for the Rubber Tire Manufacturing Source Category in Support of the 2020 Risk and Technology Review Final Rule,* and sections III and IV of the proposal preamble (84 FR 58268, October 30, 2019) available in the docket for this action.

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR RUBBER TIRE MANUFACTURING [1] SOURCE CATEGORY

Number of facilities [2]	Maximum individual cancer risk (in 1 million) [3] based on . . .		Population at increased risk of cancer ≥ 1-in-1 million based on . . .		Annual cancer incidence (cases per year) based on . . .		Maximum chronic noncancer TOSHI [4] based on . . .		Maximum screening acute noncancer HQ [5] based on actual emissions level
	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	
21	4	4	4500	4500	0.002	0.002	0.2	0.2	0.4 (REL)

[1] Based on actual and allowable emissions.
[2] Number of facilities evaluated in the risk assessment. Includes 21 operating facilities subject to 40 CFR part 63, subpart XXXX.
[3] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[4] Maximum target organ-specific hazard index (TOSHI). The target organ with the highest TOSHI for the Rubber Tire Manufacturing source category is the spleen.
[5] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. HQ values shown use the lowest available acute threshold value, which in most cases is the recommended exposure limit (REL). When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value. The HQ of 0.4 is based upon an acute REL based upon worst-case screening values.

As proposed at 84 FR 58268–58301, for the Rubber Tire Manufacturing source category, the risk analysis indicates that the cancer risk to the individual most exposed is 4-in-1 million from both actual and allowable emissions. The risk analysis also estimates a cancer incidence of 0.002 excess cancer cases per year, or 1 case every 500 years, as well as a maximum chronic noncancer target organ-specific hazard index value of 0.2 for both actual and allowable emissions. The results of the acute screening analysis also estimate a maximum acute noncancer

HQ screening value of less than 1 based on the acute reference exposure level. Mixing, extruding, and buffing emissions result in 88 percent of the cancer incidence for this source category with metal emissions from mixing, extruding, and buffing contributing 40 percent of the cancer incidence. Based on the low risks, we proposed risks are acceptable.

We then examined whether additional controls were needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. In the original NESHAP rulemaking, we identified regenerative thermal oxidizers (RTOs) as an option for further reducing organic HAP emissions, but these controls were determined to not be cost effective. The associated costs for installing and operating an RTO have not changed significantly since the analysis in the original NESHAP.

Based upon the previous analysis, we determined that the costs from the application of additional controls are not justified considering the low risks and the small reduction in risk resulting from the application of additional controls. Therefore, we proposed that the current NESHAP provides an ample margin of safety to protect public health.

Lastly, as proposed regarding risk to the environment, we conducted a Tier 1 and Tier 2 environmental risk screening analysis (see 84 FR 58284–58285). Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category and, therefore, we are finalizing our determination that it is not necessary to set more stringent standards to prevent an adverse environmental effect.

2. How did the risk review change for the Rubber Tire Manufacturing source category?

We did not receive any information that changed our risk or cost analyses and we are finalizing our proposed conclusion on the risk review.

3. What key comments did we receive on the risk review, and what are our responses?

We received several comments regarding the proposed risk review and our determination that no revisions were warranted under CAA section 112(f)(2). Comments both supported and suggested changes to our risk review. After review of these comments, we determined that no changes were necessary. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses for Rubber Tire Manufacturing Residual Risk and Technology Review,* which is available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the risk review?

We evaluated all the comments on the EPA's risk review and determined that no changes to the review are needed. For the reasons explained in the proposed rule, we determined that the risks from the Rubber Tire Manufacturing source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, pursuant to CAA section 112(f)(2), we are finalizing our residual risk determination as proposed.

B. Technology Review for the Rubber Tire Manufacturing Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Rubber Tire Manufacturing source category?

Our review of the developments in technology for the Rubber Tire Manufacturing source category did not reveal any developments in practices, processes, and controls. Because our review did not identify any practices, processes, or controls to reduce emissions in the category since promulgation of the current NESHAP, we proposed that no revisions to the NESHAP are necessary pursuant to CAA section 112(d)(6).

2. How did the technology review change for the Rubber Tire Manufacturing source category?

The technology review did not change from proposal. Therefore, we are finalizing our determination that no revisions to the NESHAP are necessary pursuant to CAA section 112(d)(6).

3. What key comments did we receive on the technology review, and what are our responses?

We received two comments regarding the proposed technology review and our determination that no revisions were warranted under CAA section 112(d)(6). The first comment supported our determination regarding the technology review. The second commenter stated that EPA legally must set emission limits for rubber processing which currently is unregulated. In support of their comment, the commenter states, ''As the Clean Air Act and D.C. Circuit Court precedent make clear, EPA must set limits on every emitted HAP. See, *e.g., Nat'l Lime Ass'n* v. *EPA,* 233 F.3d 625, 633 (D.C. Cir. 2000); 42 U.S.C. 7412(d)(1)–(3). EPA's 42 U.S.C. 7412(d)(6) authority does not allow EPA to ignore any pollutants while reviewing the emission standards for this source category, including subcategories. Rather, EPA must review and revise ''as necessary'' the emission standards for Rubber Processing.''

CAA section 112(d)(6) requires the EPA to review and revise, as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section. The EPA reads CAA section 112(d)(6) as a limited provision requiring the Agency to, at least every 8 years, review the emission standards already promulgated in the NESHAP and to revise those standards as necessary taking into account developments in practices, processes, and control technologies. Under this reading, section 112(d)(6) of the CCA does not impose upon the Agency any obligation to promulgate new emission standards or expand the scope of an existing regulation.[2]

When the EPA establishes initial standards for previously unregulated HAP or emissions points, we do so—consistent with CAA sections 112(d)(2) and (3) or, if the prerequisites are met, CAA section 112(d)(4). Establishing emissions standards under these provisions of the CAA involves a different analytical approach from reviewing emissions standards under CAA section 112(d)(6).

4. What is the rationale for our final approach for the technology review?

Our technology review looked for add-on control technology that was not identified during the original NESHAP development and for improvements to existing add-on controls. We also looked for new work practices, operational procedures, process changes, pollution prevention alternatives, coating formulations, or application techniques that have the potential to reduce emissions. Based on our review, we did not identify any developments. Since proposal, no information has been presented to cause us to change the proposed determination. Consequently, we are finalizing our CAA section 112(d)(6) determination as proposed.

[2] On April 21, 2020, as the Agency was preparing the final rule for signature, a decision was issued in *LEAN* v. *EPA,* 955 F. 3d. 1088 (D.C. Cir. 2020) in which the Court held that the EPA has an obligation to set standards for unregulated pollutants as part of technology reviews under CAA section 112(d)(6). At the time of signature, the mandate in that case had not been issued and the EPA is continuing to evaluate the decision.

C. SSM Provisions

1. What did we propose for the Rubber Tire Manufacturing source category?

We proposed amendments to the Rubber Tire Manufacturing source category to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (84 FR 58285–58287, October 30, 2019).

2. How did the SSM provisions change for the Rubber Tire Manufacturing source category?

We are finalizing the SSM provisions as proposed, while making an additional conforming change to Table 17 of the corresponding line for 40 CFR 63.7(e)(1) (*see* 84 FR 58268, October 30, 2019). We are not including a 180-day compliance period for removal of the general provisions SSM exemption in 40 CFR 63.6(f)(1), which were vacated by the Court in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008).

3. What key comments did we receive on the SSM provisions, and what are our responses?

We received one comment related to our proposed revisions to the SSM provisions. The commenter generally supported the proposed revisions to the SSM provisions and thus it does not support changes to the proposed SSM provisions. A summary of the comment and our response are located in the memorandum titled *Summary of Public Comments and Responses for Rubber Tire Manufacturing Residual Risk and Technology Review,* which is available in the docket for this action.

4. What is the rationale for our final approach for the SSM provisions?

For the reasons explained in the proposed rule, we are finalizing the amendments to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the amendments to the SSM provisions is in the preamble to the proposed rule (84 FR 58285–58287). We are finalizing, as proposed, the amendments to remove or revise provisions related to SSM.

Regarding compliance with the removal of the SSM exemption, our experience with similar industries shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plan to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the time frame needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and, thus, is finalizing that all affected sources that commenced construction or reconstruction on or before October 30, 2019, be in compliance with all of this regulation's revised requirements within 180 days of the regulation's effective date. As stated above, we are not including a 180-day compliance period for removal of the general provisions SSM exemption in 40 CFR 63.6(f)(1), which were vacated by the court in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008).

D. Electronic Reporting

1. What did we propose for the Rubber Tire Manufacturing source category?

In the October 30, 2019, proposal, we proposed that owners and operators of facilities subject to the Rubber Tire Manufacturing NESHAP submit electronic copies of performance test results, compliance reports, and NOCS reports through the EPA's CDX, using CEDRI. More information concerning the proposed amendments to electronic reporting provisions is in the preamble to the proposed rule (84 FR 58288–58289). A description of the electronic submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) Rules,* August 8, 2018, in the docket for this action.

We proposed an extension of the reporting deadline may be warranted due to outages of the EPA's CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports (see 84 FR 58288). Additionally, we proposed that an extension may be warranted due to a *force majeure* event, such as an act of nature, act of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

2. How did the electronic reporting provisions change for the Rubber Tire Manufacturing source category?

Based on comments received during the comment period, the EPA is modifying the electronic reporting provisions in one respect. The reporting provisions state that each facility that operates a tire production affected source record the emission limit option in 40 CFR 63.5984 and the compliance alternative in 40 CFR 63.5985 that it chooses to meet to comply with the standards. In the final rule, we are allowing facilities to report the emission limit option at the facility level instead of for each affected source, if the facility uses the above-mentioned emission limit option facility wide.

3. What key comments did we receive on the electronic reporting provisions, and what are our responses?

We received two comments regarding our proposed changes to the electronic reporting provisions. The first commenter generally supported the proposed electronic reporting provisions but stated that there should not be exemptions for force majeure events. The second commenter asks EPA to align reporting deadlines with state required reporting deadlines. A summary of the comments and our responses are located in the memorandum titled *Summary of Public Comments and Responses for Rubber Tire Manufacturing Residual Risk and Technology Review,* which is available in the docket for this action.

Additionally, the second commenter requested that the EPA simplify the e-reporting template. This commenter stated that the template currently requires existing facilities to identify each piece of equipment subject to the Rubber Tire Manufacturing NESHAP and the emission limit option to which it is subject. The commenter requested, to reduce reporting burden, that the EPA allow facilities to designate the manner in which they comply with the MACT for the entire facility, instead of for each piece of equipment. We first note that the concern raised by the commenter is a concern with the regulatory text; the template merely reflects the requirements in the regulation. As stated in the section above, the EPA agrees with the commenter that reporting should be allowed at the facility level, if the facility uses the emission limit option facility wide and EPA is modifying the reporting requirements in the regulation (see 40 CFR 63.6010(c)(7)),. The electronic reporting template will be modified to

be consistent with the change to the regulatory text.

4. What is the rationale for our final approach for the electronic reporting provisions?

For the reasons explained in the proposed rule and after evaluation of the comments on the proposed amendments, the EPA is requiring owners and operators of facilities subject to the Rubber Tire Manufacturing NESHAP to submit electronic copies of performance test, compliance reports, and NOCS reports through the EPA's CDX, using CEDRI. The rationale for the proposed amendments to the electronic reporting provisions is in the preamble to the proposed rule (84 FR 58268).

Additionally, as stated above, the EPA has determined that requiring facilities to report the emission limit option for each affected source (piece of equipment) is unnecessary where the facility is using the same emission limit option for all affected sources subject to this standard. In this case, simply reporting the only utilized emission limit option provides the EPA the same level of information while reducing unnecessary reporting burden on industry.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

The EPA estimates that there are 21 rubber tire manufacturing facilities that are subject to the Rubber Tire Manufacturing NESHAP affected by the final amendments to 40 CFR part 63, subpart XXXX. The bases of our estimates of affected facilities are provided in the memorandum, *Rubber Tire Major Source Memo,* which is available in the docket for this action. We are not currently aware of any planned or potential new or reconstructed rubber tire manufacturing facilities in the source category.

B. What are the air quality impacts?

All major sources in the source category would be required to comply with the relevant emission standards at all times, including periods of SSM. We do not anticipate any air quality impacts as a result of the final amendments as facilities are already in compliance with emission limits during all periods, including SSM.

C. What are the cost impacts?

The one-time cost associated with reviewing the revised rule and becoming familiar with the electronic reporting requirements is estimated to be $6,740 (2017$). The total cost per facility is estimated to be $321. All other costs associated with notifications, reporting, and recordkeeping are believed to be unchanged because the facilities in each source category are currently required to comply with notification, reporting, and recordkeeping requirements and will continue to be required to comply with those requirements. The number of personnel-hours required to develop the materials in support of reports required by the NESHAP remain unchanged.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs needed to comply with a final rule and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a final rule. The total cost associated with this final rule is estimated to be $6,740, which is a one-time cost associated with reviewing the revised rule and becoming familiar with the electronic reporting requirements. The estimated cost per facility is $321. 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.

E. What are the benefits?

The EPA does not anticipate reductions in HAP emissions as a result of the final amendments to the Rubber Tire Manufacturing NESHAP. However, the final amendments would improve the rule by ensuring that the standards apply at all times and by requiring electronic submittal of initial notifications, performance test results, and compliance reports that would increase the usefulness of the data and would ultimately result in less burden on the regulated community. Because these final amendments are not considered economically significant, as defined by Executive Order 12866, and because no emission reductions were estimated, we did not estimate any health benefits from reducing emissions.

F. What analysis of environmental justice did we conduct?

We examined the potential for any environmental justice issues that might be associated with the source category by performing a demographic analysis of the population close to the facilities. In this analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the 40 CFR part 63, subpart XXXX source category across different social, demographic, and economic groups within the populations living near facilities identified as having the highest risks. The methodology and the results of the demographic analyses are included in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Rubber Tire Manufacturing Source Category Operations,* available in the docket for this action (Docket ID No. EPA–HQ–OAR–2019–0392). The results, for various demographic groups, are based on the estimated risks from actual emissions levels for the population living within 50 kilometers (km) of the facilities.[3]

The results of the risk analysis indicate that there are approximately 4,500 people within a 50-km radius of modeled facilities exposed to a cancer risk greater than or equal to 1-in-1 million as a result of emissions from Rubber Tire Manufacturing source category operations. The specific demographic results for minority populations, low-income populations, and/or indigenous peoples, indicate that the percentage of the population potentially impacted by Rubber Tire Manufacturing emissions is greater than its corresponding nationwide percentage for: African American (25 percent for the source category compared to 12 percent nationwide) and below the poverty level (21 percent for the source category compared to 14 percent nationwide). The remaining demographic group percentages within 50 km of Rubber Tire Manufacturing source category operations exposed to a cancer risk greater than or equal to 1-in-1 million are the same or less than the corresponding nationwide percentages.

The risks due to HAP emissions from this source category were found to be acceptable for all populations (*e.g.,* with inhalation cancer risks less than or equal to 4-in-1 million for all populations and non-cancer hazard indexes are less than 1). We do not expect this final rule to achieve significant reductions in HAP emissions. However, this final rule will provide additional benefits to all populations, including these demographic groups that have a greater representation in the 50 km radius of modeled facilities, by improving the compliance, monitoring, and implementation of the NESHAP.

[3] This metric comes from the Benzene NESHAP. See 54 FR 38046.

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 contained in sections III.A and IV.A and B of the proposal preamble and further documented in the memorandum, *Residual Risk Assessment for the Rubber Tire Manufacturing Source Category in Support of the 2020 Risk and Technology Review Final Rule,* available in the docket for this action.

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 Order 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. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1982.04. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

We are finalizing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart XXXX, in the form of eliminating the SSM plan and related reporting requirements; including reporting requirements for deviations in compliance reports; and including the requirement for electronic submittal of reports. In addition, the number of facilities subject to the standards changed since the original ICR was finalized. The number of respondents was reduced from 23 to 21 based on consultation with industry representatives and state/local agencies.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of rubber tire manufacturing facilities subject to 40 CFR part 63, subpart XXXX.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart XXXX).

Estimated number of respondents: 21 facilities.

Frequency of response: The frequency of responses varies depending on the burden item. Responses include, reports of periodic performance tests and compliance reports.

Total estimated burden: The annual recordkeeping and reporting burden for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 5,870 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 156 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost after amendments for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be $819,000 (rounded, per year). Amendments for this rulemaking account for $6,740 (2017$) of the $819,000 (rounded, per year). The total cost per facility is estimated to be $321. There are no estimated capital and operation and maintenance costs. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $7,330.

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 this ICR, 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 this 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. This action will not impose any requirements on small entities, since there are no small entities in the source category.

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. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more.

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 has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Two facilities subject to this rulemaking are located on tribal land.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. A summary of that consultation is provided in the *Rubber Tire Tribal Consultation Letter,* available in the docket for this rulemaking.

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 IV.A and B of the proposal preamble and further documented in the memorandum, *Residual Risk Assessment for the Rubber Tire Manufacturing Source Category in Support of the 2020 Risk and Technology Review Final Rule,* available in the docket for this action.

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)

This rulemaking does not involve technical standards.

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).

The documentation for this decision is contained in sections IV.A, IV.B, IV.F, and IV.G of the proposal preamble. As discussed in sections IV.A, IV.B, IV.F, and IV.G of the proposal preamble, we performed a demographic analysis for the source category, which is an assessment of risks to individual demographic groups, of the population close to the facilities (within 50 km and within 5 km). The results of this evaluation are contained in the memorandum, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Rubber Tire Manufacturing Source Category Operations,* which is available in the docket for this action.

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, Intergovernmental relations, Reporting and recordkeeping requirements.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA is amending 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 XXXX—National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

■ 2. Section 63.5990 is amended by:
■ a. Revising paragraphs (a), (b), (d), (f) introductory text, (f)(2) and (3); and
■ b. Adding paragraph (f)(4).

The revisions and addition read as follows:

§ 63.5990 What are my general requirements for complying with this subpart?

(a) Before January 21, 2021, you must be in compliance with the applicable emission limitations specified in Tables 1 through 4 to this subpart at all times, except during periods of startup, shutdown, and malfunction if you are using a control device to comply with an emission limit. After January 20, 2021, you must be in compliance with the applicable emission limitations specified in Tables 1 through 4 to this subpart at all times.

(b) Before January 21, 2021, except as provided in § 63.5982(b)(4), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). After January 20, 2021, at all times, you 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 you 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 which 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 source.

* * * * *

(d) Before January 21, 2021, for each affected source that complies with the emission limits in Tables 1 through 3 to this subpart using a control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). After January 20, 2021, a startup, shutdown, and malfunction plan is not required.

* * * * *

(f) Before January 21, 2021, in your site-specific monitoring plan, you must also address the ongoing procedures specified in paragraphs (f)(1) through (3) of this section as follows. After January 20, 2021, in your site-specific monitoring plan, you must also address the ongoing procedures specified in paragraphs (f)(1) through (4) of this section as follows.

* * * * *

(2) Before January 21, 2021, ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d). After January 20, 2021, ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d)(1) and (2).

(3) Before January 21, 2021, ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i). After January 20, 2021, the owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2); and

(4) After January 20, 2021, ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

■ 3. Section 63.5993 is amended by revising paragraphs (c) and (d) to read as follows:

§ 63.5993 What performance tests and other procedures must I use?

* * * * *

(c) Before January 21, 2021, you may not conduct performance tests during periods startup, shutdown, or malfunction, as specified in § 63.7(e)(1). After January 20, 2021, performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based

on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(d) Before January 21, 2021, You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(1) unless otherwise specified in the test method. Each test run must last at least 1 hour. After January 20, 2021, you must conduct three separate test runs for each performance test required in this section, as specified in § 63.5993(c) above, unless otherwise specified in the test method. Each test run must last at least 1 hour.

* * * * *

■ 4. Section 63.5995 is amended by revising paragraph (d) to read as follows:

§ 63.5995 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(d) For any other control device, or for other capture systems, ensure that the CPMS is operated according to a monitoring plan submitted to the Administrator with the Notification of Compliance Status report required by § 63.9(h). The monitoring plan must meet the requirements in paragraphs (a) and (d)(1) through (3) of this section. Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

* * * * *

■ 5. Section 63.6009 is amended by:
■ a. Revising paragraph (e)(2); and
■ b. Adding paragraph (k)

The revision and addition read as follows:

§ 63.6009 What notifications must I submit and when?

* * * * *

(e) * * *

(2) Before January 21, 2021, for each initial compliance demonstration required in tables 6 through 8 to this subpart that includes a performance test conducted according to the requirements in table 5 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). After January 20, 2021, for each initial compliance demonstration required in tables 6 through 8 to this subpart that includes a performance test conducted according to the requirements in table 5 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2) and § 63.6010(h)(1) through (3).

* * * * *

(k) You must submit to the Administrator notification reports of the following recorded information. Beginning on January 21, 2021 or once the reporting form has been available on the Compliance and Emissions Data Reporting Interface (CEDRI) website for 1-year, whichever date is later, you must submit all subsequent notification of compliance status reports required in §§ 63.9(h) and 63.6009(d) through (i) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov*). You must use the appropriate electronic report form (*i.e.,* template) on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/cedri*) for this subpart. The date on which the report form becomes available will be listed on the CEDRI website. If the reporting form for the notification of compliance status 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 notification of compliance status reports via CEDRI. The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as confidential business information (CBI). Anything submitted using CEDRI cannot later be claimed to be CBI. Although we do not expect persons to assert a claim of CBI, if persons wish to assert a CBI, if you claim that some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate electronic reporting form found on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium 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 CEDRI as described earlier in this paragraph. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c) emissions data is not entitled to confidential treatment and requires EPA to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available. Where applicable, you may assert a claim of the EPA system outage, in accordance with § 63.6010(i), or force majeure, in accordance with § 63.6010(j), for failure to timely comply with this requirement.

■ 6. Section 63.6010 is amended by:
■ a. Revising paragraphs (b)(2) and (4);
■ b. Revising paragraphs (c)(4) and (7);
■ c. Revising paragraphs (d) introductory text, (1), and (2), and adding paragraph (d)(3);
■ d. Revising paragraph (g); and
■ e. Adding paragraphs (h) through (j).

The revisions and additions read as follows:

§ 63.6010 What reports must I submit and when?

* * * * *

(b) * * *

(2) Before January 21, 2021, the first semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5983. After January 20, 2021, the first semiannual compliance report must be submitted electronically via CEDRI no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5983.

* * * * *

(4) Before January 21, 2021, each subsequent semiannual compliance report must be postmarked or delivered no later than July 31 or January 31,

whichever date is the first date following the end of the semiannual reporting period. After January 20, 2021, each subsequent semiannual compliance report must be submitted electronically via CEDRI no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

* * * * *

(c) * * *

(4) Before January 21, 2021, if you had a startup, shutdown and malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). After January 20, 2021, a startup, shutdown, and malfunction plan is not required.

* * * * *

(7) Before January 21, 2021, for each tire production affected source, the emission limit option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet. After January 20, 2021, for each tire production affected source, the emission limit option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet. If you have chosen the same emission limit option and compliance alternative for every tire production affected source at your facility, then you may report the emission limit option and compliance alternative for the facility rather than for each tire production affected source.

* * * * *

(d) Before January 21, 2021, for each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction when the affected source is operating. After January 20, 2021, for each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (3) and (d)(1) through (3) of this section. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(1) Before January 20, 2021 the total operating time of each affected source during the reporting period. After January 20, 2021, in the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time and duration of each failure.

(2) Before January 20, 2021 information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken. After January 20, 2021, for each failure to meet an applicable standard, record and retain a list of the cause of deviations (including unknown cause, if applicable), affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) After January 20, 2021, record actions taken to minimize emissions in accordance with § 63.5990, and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(g) Before July 24, 2021, or once the reporting form has been available on the CEDRI website for 1-year, whichever date is later, if acceptable to both the Administrator and you, you may submit reports and notifications electronically. Beginning on July 24, 2021, or once the reporting form has been available on the CEDRI website for 1-year, whichever date is later, you must submit compliance reports required in § 63.6010(c)(1) through (10), as applicable, to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). You must use the appropriate electronic report form on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/cedri*) for this subpart. The date on which the report form becomes available will be listed on the CEDRI website. If the reporting form for the 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. The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Anything submitted using CEDRI cannot later be claimed to be CBI. Although we do not expect persons to assert a claim of CBI, if persons wish to assert a CBI, if you claim that some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate electronic reporting form found on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium 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 CEDRI as described earlier in this paragraph. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c) emissions data is not entitled to confidential treatment and requires EPA to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(h) After January 20, 2021, if you use a control system (add-on control device and capture system) to meet the emission limitations, you must also conduct a performance test at least once every 5 years following your initial compliance demonstration to verify control system performance and reestablish operating parameters or operating limits for control systems used to comply with the emissions limits. Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (h)(1) through (3) of this section.

(1) 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. Submit the results of the performance test to the EPA via the CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) 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. The results of the

performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) CBI. If you claim some of the information submitted under paragraph (h) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be 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. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium 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 must be submitted to the EPA via the EPA's CDX as described in paragraph (h) of this section. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c) emissions data is not entitled to confidential treatment and requires EPA to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(i) After January 20, 2021 if you are required to electronically submit a report or notification (*i.e.,* Notification of Compliance Status Report) through CEDRI in the EPA's CDX, you may assert a claim of the EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of the EPA system outage, you must meet the requirements outlined in paragraphs (i)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report or notification within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) 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 has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The 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.

(6) 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.

(7) In any circumstance, the report or notification must be submitted electronically as soon as possible after the outage is resolved.

(j) After January 20, 2021 if you are required to electronically submit a report or notification (*i.e.,* Notification of Compliance Status Report) through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (j)(1) through (5) of this section.

(1) You may submit a claim if 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 five business days prior to the date the submission is due. 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).

(2) 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 has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The 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.

(4) 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.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 7. Section 63.6011 is amended by:

■ a. Revising paragraph (a)(3); and

■ b. Adding paragraph (e).

The revision and addition read as follows:

§ 63.6011 What records must I keep?

(a) * * *

(3) Before January 21, 2021, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. After January 20, 2021, it is not required to keep records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

* * * * *

(e) After January 20, 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 63.6015 is amended by revising the definition for ''Deviation'' to read as follows:

§ 63.6015 What definitions apply to this part?

* * * * *

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) 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

(3) Before January 21, 2021, fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, and malfunction, regardless of whether or not such failure is permitted by this subpart. On and after

January 21, 2021, this paragraph no longer applies.

* * * * *

■ 9. Table 15 of Subpart XXXX is revised to read as follows:

TABLE 15 TO SUBPART XXXX OF PART 63—REQUIREMENTS FOR REPORTS

[As stated in § 63.6010, you must submit each report that applies to you according to the following table]

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period	Semiannually according to the requirements in § 63.6010(b), unless you meet the requirements for annual reporting in § 63.6010(f).
	b. If you have a deviation from any emission limitation during the reporting period at an affected source where you are not using a CPMS, the report must contain the information in § 63.6010(d). If the deviation occurred at a source where you are using a CMPS or if there were periods during which the CPMS were out-of-control as specified in § 63.8(c)(7), the report must contain the information required by § 63.5990(f)(3)	Semiannually according to the requirements in § 63.6010(b), unless you meet the requirements for annual reporting in § 63.6010(f).
	c. Before January 21, 2021, If you had a startup, shutdown, and malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). After January 20, 2021, this information is no longer required	Before January 21, 2021, semiannually according to the requirements in § 63.6010(b), unless you meet the requirements for annual reporting in § 63.6010(f). After January 20, 2021, this information is no longer required.
2. Before January 21, 2021, immediate startup, shutdown, and malfunction report if you had a startup, shutdown, and malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan. After January 20, 2021, this report is no longer required	a. Before January 21, 2021, actions taken for the event. After January 20, 2021, this report is no longer required	Before January 21, 2021, by fax or telephone within 2 working days after starting actions inconsistent with the plan. After January 20, 2021, this report is no longer required.
	b. Before January 21, 2021, the information in § 63.10(d)(5)(ii). After January 20, 2021, this report is no longer required	Before January 21, 2021, by letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)). After January 20, 2021, this report is no longer required.
3. Performance Test Report	If you use a control system (add-on control device and capture system) to meet the emission limitations	Conduct a performance test at least once every 5 years following your initial compliance demonstration according to the requirements in § 63.5993.

■ 10. Table 17 of Subpart XXXX is revised to read as follows:

Before January 21, 2021, as stated in § 63.6013, you must comply with the applicable General Provisions (GP) requirements according to the following table:

TABLE 17 TO SUBPART XXXX OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention; severability.	Yes	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes	Yes.
§ 63.6(b)(6)	[Reserved]			
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.		No	No.

TABLE 17 TO SUBPART XXXX OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes	Yes.
§ 63.6(c)(3)–(4)	[Reserved]			
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes	Yes.
§ 63.6(d)	[Reserved]			
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.		Yes	No.
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.		No. See § 63.5990(a)	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test; operation and maintenance plans; records; inspection.	Yes	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards		No	No.
§ 63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates		No	No.
§ 63.7(a)(3)	CAA section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes	No.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes	No.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes	No.
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: test plan approval procedures; performance audit requirements; and internal and external quality assurance procedures for testing.	Yes	No.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes	No.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during startup, shutdown, and malfunction; not a violation to exceed standard during startup, shutdown, and malfunction.	Yes	No.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and the EPA test methods unless Administrator approves alternative.	Yes	No.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; and conditions when data from an additional test run can be used.	Yes	No.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes	No.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status report; and keep data for 5 years.	Yes	No.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes	No.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in standard	Yes	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes	No.
§ 63.8(a)(3)	[Reserved]			
§ 63.8(a)(4)	Monitoring with Flares		No	No.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(c)(1)(i)	Routine and Predictable Startup, Shutdown, and Malfunction.		No	No.

TABLE 17 TO SUBPART XXXX OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.8(c)(1)(ii)	Startup, Shutdown, and Malfunction not in Startup, Shutdown, and Malfunction Plan.		No	No.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements; must verify operational status before or at performance test.	Yes	No.
§ 63.8(c)(4)	CMS Requirements		Applies as modified by § 63.5990(f).	No.
§ 63.8(c)(5)	Continuous Opacity Monitoring Systems Minimum Procedures.		No	No.
§ 63.8(c)(6)	CMS Requirements		Applies as modified by § 63.5990(e).	No.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes	No.
§ 63.8(d)	CMS Quality Control		Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(e)	CMS Performance Evaluation		No	No.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test		No	No.
§ 63.8(g)	Data Reduction		Applies as modified by § 63.5990(f).	No.
§ 63.9(a)	Notification Requirements	Applicability and state delegation	Yes	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construct/reconstruct, notification of startup; and contents of each.	Yes	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate.	Yes	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes	No.
§ 63.9(f)	Notification of VE/Opacity Test	No	No	
§ 63.9(g)	Additional Notifications When Using CMS.	No	No	
§ 63.9(h)	Notification of Compliance Status	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than 1 source.	Yes	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; and keep for 5 years..	Yes	Yes.
§ 63.10(b)(2)(i)–(iv)	Records related to Startup, Shutdown, and Malfunction.	Yes	No	
§ 63.10(b)(2)(vi) and (x)–(xi).	CMS Records	Malfunctions, inoperative, out-of-control; calibration checks; adjustments, maintenance.	Yes	No.
§ 63.10(b)(2)(vii)–(ix).	Records	Measurements to demonstrate compliance with emission limitations; -performance test, performance evaluation, and VE observation results; and measurements to determine conditions of performance tests and performance evaluations.	Yes	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes	Yes.
§ 63.10(b)(2)(xiii)	Records		No	No.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes	Yes.
§ 63.10(c)	Records		No	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority	Yes	No.
§ 63.10(d)(3)	Reporting Opacity or VE Observations		No	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.		Yes	No.
§ 63.10(e)	Additional CMS Reports		No	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for Administrator to waive	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.11	Flares		No	No.
§ 63.12	Delegation	State authority to enforce standards	Yes	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes	Yes.

After January 20, 2021, as stated in § 63.6013, you must comply with the applicable General Provisions (GP) requirements according to the following table:

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention; severability.	Yes	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes	Yes.
§ 63.6(b)(6)	[Reserved]			
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.		No	No.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes	Yes.
§ 63.6(c)(3)–(4)	[Reserved]			
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes	Yes.
§ 63.6(d)	[Reserved]			
§ 63.6(e)(1)(i)–(ii)	Operations and Maintenance		No	No.
§ 63.6(e)(1)(iii)–(2)	Operation and Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.		No	No.
§ 63.6(f)(1)	Startup, Shutdown, and Malfunction Exemption.		No. See § 63.5990(a)	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test; operation and maintenance plans; records; inspection.	Yes	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes	Yes.
§ 63.6(h)	Opacity/Visible Emissions (VE) Standards.		No	No.
§ 63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates		No	No.
§ 63.7(a)(3)	CAA section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes	No.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes	No.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes	No.

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: test plan approval procedures; performance audit requirements; and internal and external quality assurance procedures for testing.	Yes	No.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes	No.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during startup, shutdown, and malfunction.	No	No.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and the EPA test methods unless Administrator approves alternative.	Yes	No.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; and conditions when data from an additional test run can be used.	Yes	No.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes	No.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status report; and keep data for 5 years.	Yes	No.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes	No.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in standard	Yes	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes	No.
§ 63.8(a)(3)	[Reserved]			
§ 63.8(a)(4)	Monitoring with Flares		No	No.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(c)(1)(i)	Routine and Predictable Startup, Shutdown, and Malfunction.		No	No.
§ 63.8(c)(1)(ii)	Startup, Shutdown, and Malfunction not in Startup, Shutdown, and Malfunction Plan.		No	No.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How the Administrator determines if source complying with operation and maintenance requirements; review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system.	No	No.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements; must verify operational status before or at performance test.	Yes	No.
§ 63.8(c)(4)	CMS Requirements		Applies as modified by § 63.5990(f).	No.
§ 63.8(c)(5)	Continuous Opacity Monitoring Systems Minimum Procedures.		No	No.
§ 63.8(c)(6)	CMS Requirements		Applies as modified by § 63.5990(e).	No.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes	No.
§ 63.8(d)	CMS Quality Control		Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(d)(3)	Written Procedures for CMS		No	No.
§ 63.8(e)	CMS Performance Evaluation		No	No.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test		No	No.
§ 63.8(g)	Data Reduction		Applies as modified by § 63.5990(f).	No.
§ 63.9(a)	Notification Requirements	Applicability and state delegation	Yes	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construct/reconstruct, notification of startup; and contents of each.	Yes	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate.	Yes	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes	No.
§ 63.9(f)	Notification of VE/Opacity Test		No	No.

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.9(g)	Additional Notifications When Using CMS.		No	No.
§ 63.9(h)	Notification of Compliance Status	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than 1 source.	Yes	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; and keep for 5 years.	Yes	Yes.
§ 63.10(b)(2)(i) and (iv–v).	Records related to Startup, Shutdown, and Malfunction.		No	No.
§ 63.10(b)(2)(ii)	Recordkeeping of failures to meet a standard.		No. *See* 63.6010 for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.	
§ 63.10(b)(2)(iii), (vi), and (x)–(xi).	CMS Records	Malfunctions, inoperative, out-of-control; calibration checks; adjustments, maintenance.	Yes	No.
§ 63.10(b)(2)(vii)–(ix).	Records	Measurements to demonstrate compliance with emission limitations; performance test, performance evaluation, and VE observation results; and measurements to determine conditions of performance tests and performance evaluations.	Yes	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes	Yes.
§ 63.10(b)(2)(xiii)	Records		No	No.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes	Yes.
§ 63.10(c)	Records		No	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority	Yes	No.
§ 63.10(d)(3)	Reporting Opacity or VE Observations		No	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.		No	No.
§ 63.10(e)	Additional CMS Reports		No	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for Administrator to waive	Yes	Yes.
§ 63.11	Flares		No	No.
§ 63.12	Delegation	State authority to enforce standards	Yes	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes	Yes.

[FR Doc. 2020–12541 Filed 7–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 350 and 355

[EPA–HQ–SFUND–1988–0002, EPA–HQ–SFUND–1998–0002; FRL–10012–00–OLEM]

Emergency Planning and Community Right-to-Know Regulations: Trade Secrecy Claims and Emergency Planning Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is issuing a technical amendment to update the program websites for trade secrecy regulations. This action amends the regulations to remove the outdated substantiation form for trade secrecy claims from the Code of Federal Regulations. The most current substantiation form is posted on EPA program websites. The Agency is also including clarification within a note in the regulations for state coordination of emergency response.

DATES: This final rule is effective on July 24, 2020.

ADDRESSES: EPA has established two dockets for this action under Docket ID No. EPA–HQ–SFUND–1988–0002 and EPA–HQ–SFUND–1998–0002. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are

available electronically through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Douglas, U.S. Environmental Protection Agency, Office of Emergency Management, (MC: 5104A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; 202–564–5572; *douglas.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Entities that may be affected by this action are those facilities subject to sections 302, 303, 304, 311, 312, 313, 325, 327, 328, and 329 of the Emergency Planning and Community Right-to-Know Act (EPCRA), specifically, entities that file trade secrecy claims for chemical identity and/or report emergency release notifications under the aforementioned sections.

II. What does this correction do?

This technical amendment is being issued to correct the program website for the EPCRA Trade Secrecy Claims in 40 CFR 350.7, 350.16, and 350.27. EPA published an amendment in the **Federal Register** on November 14, 2003 (68 FR 64719) similarly correcting program websites. That document also discusses the intent of removing the Trade Secret substantiation form (OMB control number 2050–0078) and instructions from 40 CFR 350.27 and directing the public to the program websites to access the current version. Furthermore, the form requires Office of Management and Budget approval every three years, but § 350.27 still reflects a form that expired in 1990. The 2003 amendment inadvertently omitted the instructions to update CFR part 350 to remove the form. This technical amendment is being issued to amend the final rule by revising § 350.27 to direct the public to the current version of the form and instructions on the program websites.

This technical amendment is also being issued to revise a note in 40 CFR 355.41 to denote potential SERC specific formats in the reporting requirements. On November 3, 2008, EPA published an amendment in the **Federal Register** (73 FR 65452) updating 40 CFR part 355. This action further clarifies a note at § 355.41.

III. Rulemaking Procedures and Findings of Good Cause

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because such notice and opportunity for comment is unnecessary for the following two reasons. First, this action is merely correcting the regulatory text to reflect the removal of a form, where such removal was intended in a previously published final rule that went through notice and public comment procedures, but in which EPA inadvertently neglected to include the necessary amendatory instruction to revise the regulatory text. Second, this action is a minor, non-substantive technical correction since it involves removal of a duplicative and outdated form. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Effective Date

Section 553(d)(3) of the APA, 5 U.S.C. 553(d), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' Gavrilovic, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because it merely removes an old Trade Secret substantiation form and directs the public to the program websites to access the most current version. For this reason, the agency finds that good cause exists under APA section 553(d)(3) to make this rule effective immediately upon publication.

V. Do any of the Statutory and Executive Order reviews apply to this action?

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and is therefore not subject to the Office of Management and Budget (OMB) review. Additionally, this action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866. Because this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section III of the preamble, including the basis for that finding.

List of Subjects

40 CFR Part 350

Environmental protection, Confidential business information, Reporting and recordkeeping requirements.

40 CFR Part 355

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 7, 2020.

Peter Wright,

Assistant Administrator, Office of Land and Emergency Management.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 350—TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION: AND TRADE SECRET DISCLOSURES TO HEALTH PROFESSIONALS

■ 1. The authority citation for Part 350 continues to read as follows:

Authority: 42 U.S.C. 11042, 11043, and 11048 Pub. L. 99–499, 100 Stat. 1747.

■ 2. Amend § 350.7 by revising paragraphs (a) introductory text, (b), (c) and (d)(2) to read as follows:

§ 350.7 Substantiating claims of trade secrecy.

(a) Claims of trade secrecy must be substantiated by providing a specific answer including, where applicable, specific facts, to each of the following questions with submission to which the trade secrecy claim pertains. Submitters must answer these questions on the form entitled ''Substantiation to Accompany Claims of Trade Secrecy.'' The form and instructions are posted on the EPA program websites, *http://www.epa.gov/epcra* and *http://www.epa.gov/tri/rfi.*

* * * * *

(b) The answers to the substantiation questions listed in paragraph (a) of this section are to be submitted on the form entitled ''Substantiation to Accompany Claims of Trade Secrecy'' and included with a submitter's trade secret claim. The form is posted on the EPA program websites, *http://www.epa.gov/epcra* and *http://www.epa.gov/tri/rfi,*

(c) An owner, operator, or senior official with management responsibility shall sign the certification at the end of the form entitled ''Substantiation to Accompany Claims of Trade Secrecy,'' which is posted on the EPA program websites, *http://www.epa.gov/epcra* and *http://www.epa.gov/tri/rfi.* The certification in both the sanitized and unsanitized versions of the substantiation must bear an original signature.

(d) * * *

(2) An owner, operator, or senior official with management responsibility shall sign the certification stating that those portions of the substantiation claimed as confidential would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. This certification is combined on the substantiation form found on EPA program websites, *http://www.epa.gov/epcra* and *http://www.epa.gov/tri/rfi,* with the certification described in paragraph (c) of this section.

* * * * *

■ 3. Revise § 350.16 to read as follows:

§ 350.16 Address to send trade secrecy claims and petitions requesting disclosure.

The address and location to send all claims of trade secrecy under sections 303(d)(2) and (d)(3), 311, 312, and 313 of Title III and all public petitions requesting disclosure of chemical identities claimed as trade secret are posted on the following EPA program websites, *http://www.epa.gov/epcra* and *http://www.epa.gov/tri/rfi.* Any subsequent changes to the address and location will be announced in **Federal Register** Notices as these changes occur. Also, the changes will be posted on these websites. Submitters may also contact the EPCRA, RMP & Oil Information Center at (800) 424–9346 or (703) 348–5070, *https://www.epa.gov/epcra/forms/contact-us-about-emergency-planning-and-community-right-know-act-epcra* to obtain this information.

■ 4. Amend § 350.27 by revising paragraph (a) and removing and reserving paragraph (b), including the form and instructions to the form, to read as follows:

§ 350.27 Substantiation form to accompany claims of trade secrecy, instructions to substantiation form.

(a) The substantiation form to accompany claims of trade secrecy must be completed and submitted as required in § 350.7(a). The form and instructions are posted on the Emergency Planning and Community Right-to-Know Act (EPCRA) website, *http://www.epa.gov/epcra* and the Toxics Release Inventory Program Division website, *http://www.epa.gov/tri/rfi.* Submitters may also contact the National Service Center for Environmental Publications (NSCEP) at (800) 490–9198 or *https://www.epa.gov/nscep* to obtain the form. The address to send all trade secrecy claims is posted on the following EPA Program websites, *http://www.epa.gov/epcra* and *http://www.epa.gov/tri/rfi.* This information can also be obtained by contacting the EPCRA, RMP & Oil Information Center at (800) 424–9346 or (703) 348–5070, or *https://www.epa.gov/epcra/forms/contact-us-about-emergency-planning-and-community-right-know-act-epcra.*

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 5. The authority citation for Part 355 continues to read as follows:

Authority: Sections 302, 303, 304, 325, 327, 328, and 329 of the Emergency Planning and Community Right-to-know Act of 1986 (EPCRA) (42 U.S.C. 11002, 11003, 11004, 11045, 11047, 11048, and 11049).

■ 7. Amend the Note to § 355.41 to read as follows:

§ 355.41 In what format should the information be submitted?

* * * * *

Note 1 to § 355.41: The SERC and LEPC may request a specific format for this information.

[FR Doc. 2020–15139 Filed 7–23–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket Nos. 17–95, 18–315; FCC 20–66; FRS 16866]

Earth Stations in Motion

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its rules to facilitate the deployment of earth stations in motion (ESIMs) communicating with geostationary (GSO) and non-geostationary orbit (NGSO) fixed-satellite service (FSS) satellite systems.

DATES: *This rule is effective:* July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Cindy Spiers, 202–418–1593.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, IB Docket Nos. 17–95 and 18–315, FCC 20–66, adopted on May 13, 2020, and released on May 14, 2020. The full text of this document is

available at *https://docs.fcc.gov/public/attachments/FCC-20-66A1.pdf.* The full text of this document is also available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, 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).

Synopsis

In this *Second Report and Order in IB Docket No. 17–95 and Report and Order in IB Docket No. 18–315 (Report and Order) and Further Notice of Proposed Rulemaking (Further Notice),* the Commission continues to facilitate the deployment of, and reduce the regulatory burdens on, Earth Stations in Motion (ESIMs).[1] First, we allow ESIMs to communicate in additional frequency bands with geostationary-satellite orbit (GSO) satellites operating in bands allocated to the fixed-satellite service (FSS). Second, we adopt rules for ESIMs to communicate with non-geostationary orbit (NGSO) satellites in specific frequency bands allocated to the FSS. Finally, we seek to further develop the record regarding potential interference from out-of-band emissions of ESIMs in the 28.35–28.6 GHz band into the adjacent 27.5–28.35 GHz band used by Upper Microwave Flexible Use Service (UMFUS). These actions will promote innovative and flexible use of satellite technology, as well as provide regulatory equity between GSO and NGSO FSS systems.

Report and Order

Because of the interrelated nature of the two proceedings, we address both proceedings in here. In the discussion below, we first address the addition of frequency bands in which ESIMs can communicate with GSO FSS satellites. Specifically, we adopt our proposal to allow ESIMs to operate in all of the frequency bands in which earth stations at fixed locations operating with GSO FSS satellite networks can be blanket-licensed, and to allow ESIMs to receive signals from GSO FSS satellite space stations in the Ka-band, with some restrictions. We then address the issues raised in the NGSO ESIMs NPRM, and adopt a regulatory framework for ESIMs communications with NGSO FSS systems that is analogous to that which currently exists for ESIMs communicating with GSO FSS systems, with the exception of the frequency bands 18.6–18.8 GHz, 28.35–28.4 GHz, and 29.25–29.5 GHz. We also extend blanket earth station licensing to ESIMs communicating with NGSO FSS systems. We defer consideration of our proposal to allow ESIMs to operate in the 28.35–28.4 GHz band while we study the potential interference from out-of-band emissions of ESIMs into the adjacent 27.5–28.35 GHz band.

ESIMs Communications With GSO Satellites in Additional Frequency Bands (IB Docket No. 17–95)

In the *GSO ESIMs FNPRM,* the Commission sought comment on allowing ESIMs to operate in all of the frequency bands in which earth stations at fixed locations operating in GSO FSS satellite networks can be blanket-licensed. The Commission believed in this situation operation of earth stations in motion should not introduce a material change to the interference environment created or to the protection required.[2] Many commenters support these changes and no commenters opposed.[3] Boeing points out that among other benefits, the use of many of these frequencies by ESIMs will help to align the FSS frequencies that are available for use by ESIMs in different regions of the world, and that this alignment is important because many ESIMs—including those on airplanes and ships—do not limit their operations to single continents.[4] SES, O3b, and Intelsat note that expanding the frequencies available for GSO ESIM networks will allow more intensive spectrum use and is fully consistent with other authorized operations in these frequency bands.[5]

We agree that, for the reasons stated by commenters, the public interest is served by the addition of frequency bands in which ESIMs are allowed to communicate with GSO FSS satellites. We address the individual frequency bands in turn below. We then address general issues that are not specific to any particular frequency band.

The Extended Ku-Band

The Commission sought comment on expanding the Ku-band frequency ranges in which ESIMs can be authorized to receive transmissions from GSO FSS satellites[6] to include the 10.7–10.95 GHz and 11.2–11.45 GHz bands.[7] These frequency bands are allocated on a co-primary basis to the fixed service and FSS (space-to-Earth), but GSO FSS use of both bands is limited to international systems (that is, to communications that do not originate and terminate within the United States).[8] The Commission noted, however, that in the 10.95–11.2 GHz (space-to-Earth) and 11.45–11.7 GHz (space-to-Earth) bands, communications of ESIMs with GSO satellites is allowed subject to the condition that these earth stations may not claim protection from transmissions of non-Federal fixed service stations.[9] The Commission requested comment on whether communications in the 10.7–10.95 GHz and 11.2–11.45 GHz (space-to-Earth) bands could also be allowed on an unprotected basis with respect to other services.[10]

Satellite operators overwhelmingly support allowing ESIMs to receive transmissions from GSO FSS satellites on an unprotected basis in these bands.[11] Commenters state that, because

[1] The term ''ESIMs'' is the collective designation for three types of earth stations that the Commission authorizes to transmit while in motion: Earth Stations on Vessels (ESVs), Vehicle-Mounted Earth Stations (VMESs), and Earth Stations Aboard Aircraft (ESAAs) to communicate with space stations using frequencies allocated to the fixed satellite service. Broadly stated, Earth Stations on Vessels refers to earth stations that communicate with a satellite while located on maritime vessels such as boats, cargo ships or cruise ships, whereas Vehicle-Mounted Earth Stations and Earth Stations Aboard Aircraft refer to earth stations that communicate with satellites while located on land-based vehicles or aircraft, respectively.

[2] *GSO ESIMs FNPRM,* 33 FCC Rcd at 9358, para. 91.

[3] *See, e.g.,* Boeing FNPRM Comments at 1; Hughes FNPRM Comments at 2; Inmarsat FNPRM Comments at 2.

[4] *See* Boeing FNPRM Comments at 3.

[5] SES, O3b and Intelsat FNPRM Reply Comments at 1–2.

[6] *See* 47 CFR 2.106, NG527A.

[7] *See GSO ESIMs FNPRM,* 33 FCC Rcd at 9354, para. 90. As we noted in the *FNPRM,* the Commission's part 25 rules currently allow for blanket licensing in the 10.7–10.95 GHz, 11.2–11.45 GHz, and 17.8–18.3 GHz (space-to-Earth) on an unprotected basis with respect to the fixed service.

[8] 47 CFR 2.106, NG52 (''Except as provided for by NG527A, use of the bands 10.7–11.7 GHz (space-to-Earth) and 12.75–13.25 GHz (Earth-to-space) by geostationary satellites in the [FSS] shall be limited to international systems, *i.e.,* other than domestic systems.'').

[9] 47 CFR 2.106, NG527A. *See also GSO ESIMs FNPRM,* 33 FCC Rcd at 9340, para. 44.

[10] *GSO ESIMs FNPRM,* 33 FCC Rcd at 9355, para. 91.

[11] *See, e.g.,* Boeing FNPRM Comments at 2–3; Hughes FNPRM Comments at 2–3; SES FNPRM

Continued

ESIMs operations are receive-only in the 10.7–10.95 GHz and 11.2–11.45 GHz bands, allowing ESIMs to operate in these frequency bands does ''not increase the potential for harmful interference'' to other spectrum users.[12] In addition, they state that because ESIMs operate on mobile platforms (that is, in aeronautical, maritime and land-mobility applications) and often far from other co-frequency systems and services (for example, aircraft in flight or vessels in international waters), there is no need to protect ESIMs reception in these bands.[13] Commenters also assert that access to additional ESIM receive spectrum would enhance flexibility, data rates, and aggregate capacity for ESIM operators and consumers.[14]

Based on the record, including the lack of opposition to this proposal, we will allow communications from GSO FSS satellites to ESIMs in the 10.7–10.95 GHz and 11.2–11.45 GHz (space-to-Earth) bands on an unprotected basis vis-à-vis fixed service stations. We agree that ESIMs can receive transmissions from GSO FSS satellites in the 10.7–10.95 GHz and 11.2–11.45 GHz bands without requiring protection from fixed service stations that have primary status in these bands.[15] The Fixed Wireless Communications Coalition (FWCC) asks the Commission to clarify that fixed service will not be required to protect ESIMs in the 10.7–10.95 GHz and 11.2–11.45 GHz (space-to-Earth) bands from interference.[16] We so clarify. Accordingly, we amend footnote NG527A to include 10.7–10.95 GHz and 11.2–11.45 GHz (space-to-Earth) in the frequency bands in which ESIMs may be authorized to communicate with GSO satellites, subject to the condition that ESIMs may not claim protection from transmissions of non-Federal fixed service stations.[17] In addition, CORF notes that radio astronomers make important observations in the 10.6–10.7 GHz band,[18] and that the U.S. Table requires operators to protect radio astronomy service from satellite downlinks emissions into the 10.68–10.70 GHz portion of the band.[19] Footnotes to the U.S. Table already provide such protections,[20] and satellite licenses and grants of U.S. market access are issued by the Commission subject to such footnotes. Accordingly, no additional action is necessary.

The Ka-Band

The Commission sought comment on allowing ESIMs to receive signals from GSO FSS satellites on a secondary basis in the 17.8–18.3 GHz (space-to-Earth) band and on a primary basis in the 19.3–19.4 GHz (space-to-Earth) and 19.6–19.7 GHz (space-to-Earth) bands.[21] The Commission also requested comment on whether to allow ESIMs to communicate with GSO FSS satellites in the 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space) bands on an unprotected, non-interference basis with respect to NGSO FSS satellite systems.[22] It sought comment on any possible effects these proposals may have on existing or future services in these frequency bands or adjacent frequency bands and on any necessary changes to our rules that may be appropriate to accommodate them.[23]

We address each of these frequency bands in turn below. Specifically, we will allow ESIMs to receive signals from GSO FSS space stations on a secondary basis in the 17.8–18.3 GHz band and on a primary basis in the 19.3–19.4 and 19.6–19.7 GHz band. We will also allow ESIMs to operate with GSO FSS satellite networks in the 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space) bands on an unprotected, non-interference basis with respect to NGSO FSS satellite systems.

17.8–18.3 GHz, 19.3–19.4 GHz, and 19.6–19.7 GHz.—Commenters observe that satellite space-to-Earth transmissions in the 17.8–18.3 GHz, 19.3–19.4 GHz, and 19.6–19.7 GHz bands are already subject to power flux density limits designed to protect terrestrial systems,[24] and reception of satellite signals by ESIMs has no effect on these power flux density levels set forth in the Commission's rules.[25] Satellite operators therefore state that ESIMs can co-exist with terrestrial fixed service operations in these bands.[26] Commenters also point out that the authorization of ESIMs to receive signals from GSO networks in the 17.8–18.3 GHz band will help to align the frequencies available to ESIMs in the United States with those that are available in the rest of the world.[27] In addition, ESIMs communications with GSO FSS satellites in these bands will be required to be coordinated with Federal FSS systems pursuant to the U.S. Table.[28] No commenters disagree with allowing ESIMs to receive signals from GSO FSS satellites in these bands.

We proposed allowing ESIMs to receive signals from GSO FSS satellites in the 17.8–18.3 GHz (space-to-Earth) band on a secondary basis. FSS is allocated in the space-to-Earth direction on a secondary basis to the fixed service in the 17.8–18.3 GHz band and no parties objected to our proposal. Thus, we add NG527A(d) in the U.S. Table of Allocations to allow ESIMs to receive signals from GSO FSS satellites in the 17.8–18.3 GHz (space-to-Earth) band on a secondary basis.

Further, we proposed allowing ESIMs to receive signals from GSO FSS satellites in the 19.3–19.4 GHz (space-to-Earth) and 19.6–19.7 GHz (space-to-Earth) bands on a co-primary basis with fixed service and Federal FSS. However, given the difficulties with coordinating ESIM operations with terrestrial stations, we conclude here, as proposed by FWCC,[29] that in the 19.3–19.4 GHz (space-to-Earth) and 19.6–19.7 GHz (space-to-Earth) bands, ESIMs should be allowed to operate on an unprotected basis with regard to fixed service and Federal FSS. Allowing such ESIM operations will not change the existing interference environment in these bands. FSS is already allocated in the space-to-Earth direction on a co-primary basis with fixed service in the 19.3–19.4 GHz and 19.6–19.7 GHz bands subject to power flux density limits designed to

Comments at 1–2; Viasat FNPRM Comments at 1, 3.

[12] Panasonic FNPRM Comments at 2; *see also* Boeing FNPRM Comments at 3.

[13] *Id.*

[14] Panasonic FNPRM Comments at 2; *see also* Boeing FNPRM Comments at 3; SES FNPRM Comments at 2; Viasat FNPRM Comments at 3–4.

[15] GSO FSS downlink transmissions are already permitted in these frequency bands, subject to power flux density limit designed to protect fixed service stations from unacceptable interference. *See* International Telecommunication Union (ITU) Article 21.

[16] FWCC FNPRM Comments at 1–2.

[17] *See* Appendix B, 47 CFR 2.106, NG572A(a).

[18] Although on page 7 of its FNPRM Comments CORF mentions 10.6–11.7 GHz, it is clear from the context that their intention was to reference the 10.6–10.7 GHz band which has a primary allocation to the Radio Astronomy Services. 47 CFR 2.106.

[19] CORF FNPRM Comments at 7.

[20] *See, e.g.,* 47 CFR 2.106, US211 and US246.

[21] *GSO ESIMs FNPRM,* 33 FCC Rcd at 9355, para. 91.

[22] *Id.*

[23] *Id.*

[24] 47 CFR 25.208(c).

[25] SES FNPRM Reply Comments at 2; *see also* Boeing FNPRM Comments at 3 (stating that the existence of ESIMs in these frequencies will not interfere with fixed service networks because they will continue to be protected by the power flux density limits on satellite downlink communications that are maintained by the ITU to protect primary terrestrial uses of the 17.7–18.3 GHz frequencies).

[26] SES FNPRM Comments at 2; Inmarsat FNPRM Comments at 2–3; Viasat FNPRM Comments at 3–4. *See also* Boeing FNPRM Comments at 4–5 (stating that ESIMs experiencing interference can either shift to a different receiving frequency or can move to a new location where the interference does not exist; further, given the relatively high speeds in which many ESIMs will be in motion, any unacceptable interference received from fixed service transmitters will only be momentary in duration and likely result in no detectible interference to the ESIM end user's services).

[27] Boeing FNPRM Comments at 4.

[28] 47 CFR 2.106, US334.

[29] *See* FWCC Comments at 1, 3.

protect terrestrial systems. Accordingly, we revise NG527A(a) in the U.S. Table of Allocations to allow ESIMs to receive signals from GSO FSS satellites in the 19.3–19.4 GHz (space-to-Earth), and 19.6–19.7 GHz (space-to-Earth) bands on an unprotected basis.

18.8–19.3 GHz and 28.6–29.1 GHz.— The record supports a finding that allowing ESIMs to communicate with GSO FSS satellites in the 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space) bands serves the public interest. Viasat asserts that such a change can expedite consumer access to mobile applications of satellite broadband services technologies.[30] Boeing believes that ESIMs communicating with GSO and NGSO satellites in these bands could complement each other by providing very robust coverage and throughput to end users using a combination of NGSO and GSO satellites.[31]

We find that it is possible with a high degree of coordination among operators for ESIMs to communicate with GSO FSS satellites in the 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space) bands without causing interference to NGSO FSS systems. Inmarsat, for example, states that ''[t]echniques for managing interference between FSS systems are well understood'' and the ''introduction of ESIMs into FSS spectrum does not materially change these interference scenarios.'' [32] ViaSat concurs, asserting that ''[i]t is well-established that ESIMs can perform within the same technical envelope as fixed earth stations through highly accurate antenna pointing mechanisms and compliance with appropriate power limits'' and ''[t]herefore, in the 18.8–19.3 GHz and 28.6–29.1 GHz (Earth-to-space) bands, where the Commission has determined that the GSO FSS successfully can operate on a secondary basis to the NGSO FSS, adding ESIMs would not change this conclusion.'' [33]

We agree with these commenters that it is technically feasible for ESIMs to communicate with GSO FSS space stations in these bands without causing interference to NGSO FSS systems provided the operators coordinate their operations. GSO earth stations transmitting to a GSO space station would have to stop transmissions whenever an NGSO space station using the same frequency band is within the earth station transmitting beam. Similarly, during transmissions from GSO space stations, GSO space station operators will need to take into account the presence of a beam through which an earth station is receiving co-frequency signals from an NGSO space stations. Such co-existence will necessitate a high degree of coordination between the GSO and NGSO systems to ensure interference does not result to NGSO FSS operations and, when authorizing ESIMs to communicate with GSO FSS satellites in these bands, the secondary nature of such communications will need to be fully taken into account.[34]

We agree with Boeing that the priority of NGSO FSS systems in these frequencies is critical to their growth and operation.[35] As explained by Telesat, the demand for ''mobile aeronautical, maritime and land services is one of the key drivers of the burgeoning NGSO demand for this spectrum.'' [36] While recognizing that it would be inequitable to alter the regulatory status between NGSO and GSO FSS systems in the 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space) frequency bands, allowing communications between ESIMs and GSO FSS satellites in these frequency bands on an unprotected, non-interference basis with respect to NGSO FSS satellite systems leads to more efficient use of spectrum without imposing a burden on NGSO FSS operations in this band.[37] The GSO system, operating on a non-interference, non-protected basis, is expected to show, to the NGSO system satisfaction, that it is capable of protecting the NGSO's operation. The only burden on the NGSO system is to examine the GSO showing in good faith to determine its acceptability.

Accordingly, we will allow ESIMs to communicate with GSO FSS satellites in the 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space) bands on an unprotected, non-interference basis with respect to NGSO FSS satellite systems.[38] Both these bands are allocated to FSS on a primary basis, but GSO FSS operations are conducted on an unprotected, non-interference basis with respect to NGSO FSS.[39] We find that the record supports allowing ESIMs to communicate with GSO FSS satellites in these bands, consistent with the existing status of GSO FSS vis-à-vis NGSO FSS.

General Issues

The Commission sought comment on any possible effects that expanding the frequencies available to ESIMs communicating with GSO FSS satellite networks may have on other services in these frequency bands or adjacent frequency bands in the United States.[40] National Academy of Sciences' Committee on Radio Frequencies (CORF) expresses concern about other services and adjacent bands.[41] In addition, Boeing proposes that consideration be given to opening the 19.4–19.6 GHz band to both GSO and NGSO FSS systems, including those operating with ESIMs.[42]

CORF expresses concerns regarding potential interference to protected passive scientific observations caused by GSO FSS downlink transmissions to ESIMs.[43] Specifically, CORF is concerned that the reception of GSO FSS satellite signals by ESIMs in the 10.7–10.95 GHz, 17.8–18.3 GHz, 18.8–19.3 GHz (space-to-Earth), and 19.6–19.7 GHz (space-to-Earth) bands, which, CORF asserts, could result in additional interference to Earth exploration-satellite service systems and radio astronomy service operating in adjacent frequencies. CORF advocates for more stringent out-of-band emissions limits for GSO FSS satellite signals that would be received by ESIMs using the 10.7–

[30] Viasat FNPRM Comments at 2.

[31] Boeing FNPRM Reply Comments at 4.

[32] Inmarsat FNPRM Comments at 3.

[33] Viasat FNPRM Comments at 3.

[34] The Commission has been requiring that, in these bands, GSO operations with fixed earth stations must accept interference from and not cause harmful interference to NGSO operations. *See, e.g.* Satellite Policy Branch Information Action Taken, Report No. 01258 (IBFS File No. SAT–LOA–20160624–00061) Aug. 4, 2017, Jupiter 2 Grant at condition 5. A similar condition would be imposed on ESIMs operations. Operations with ESIMs are no different, as ESIMs are supposed to operate as a fixed earth station that can be anywhere within the satellite beam.

[35] Boeing FNPRM Reply Comments at 5.

[36] Telesat FNPRM Reply Comment at 3.

[37] Boeing FNPRM Comments at 6–8 (asking the Commission to be diligent in ensuring the subordinate status of GSO FSS networks vis-à-vis NGSO FSS operations); SES FNPRM Comments at 2 (stating that SES supports allowing GSO ESIM use of these frequency bands, provided that the Commission adopts its proposal to specify that GSO operations in the band segments are ''on an unprotected, non-interference basis with respect to NGSO FSS satellite systems'' to ensure NGSO use of these critical frequencies is not impaired). As discussed below, we reject Echostar's proposal to give equal status to ESIMs operating with GSO and NGSO space stations as this would contradict the secondary designation of GSO systems in these bands. *See infra* paras. 32–33.

[38] *See* Appendix B (where a reference to footnote NG527A has been added to the 18.8–19.3 GHz band in the non-Federal Table and where the text of footnote NG527A has been revised accordingly).

[39] 47 CFR 2.106, NG165 (stating, ''In the bands 18.8–19.3 GHz and 28.6–29.1 GHz, geostationary-satellite networks in the fixed-satellite service shall not cause harmful interference to, or claim protection from, non-geostationary-satellite systems in the fixed-satellite service.'').

[40] *ESIMs GSO FSS FNPRM,* 32 FCC Rcd at 9354, para. 90.

[41] *See generally* CORF FNPRM Comments. The FWCC's concerns were previously addressed in the discussion on the individual frequency bands.

[42] Boeing FNPRM Reply Comments.

[43] *See generally* CORF FNPRM Comments.

10.95 GHz band.[44] CORF also suggests that the Commission prohibit the reception of satellite signals by ESIMs in the bottom 25 megahertz portion of the 10.7–10.95 GHz band in order to create a guard band to further protect scientific monitoring by Earth exploration-satellite service systems.[45]

We decline to adopt new limits on out-of-band emissions or prohibitions on GSO FSS downlink use in this proceeding. References to ESIMs communications with GSO FSS satellites as ''ESIM downlinks'' are inaccurate, and concerns regarding the difficulty of addressing interference from ''moving targets'' are misplaced, because the only transmissions in the frequency ranges discussed by CORF will be from GSO satellites, not from ESIM terminals.[46] Accordingly, CORF concerns are not with ESIMs, which solely receive in the frequency bands that CORF identified as being of concern, but rather with the space-to-Earth transmissions of GSO FSS satellites, which are not the subject of this rulemaking. In this respect, we note that the Commission's rules already impose specific limits on out of band emissions in the frequency bands and services at issue here.[47] Possible revisions to these limits are the subject of a separate rulemaking.[48] In addition, as mentioned above, protection of radio astronomy service observations is also ensured through specific footnotes to the U.S. Table of Allocations.[49]

Additionally, CORF expresses concern about the use of the 18.6–18.8 GHz (space-to-Earth) band, which was not proposed as an additional frequency band for communications of ESIMs with NGSO FSS satellites.[50] This band is allocated for passive scientific observation use on a co-primary basis with GSO FSS in the space-to-Earth direction, with GSO FSS downlinks subject to power flux density limits designed to protect other authorized spectrum users.[51] Specifically, CORF states that any new use by ESIMs in these frequency bands should be mindful of the need to preserve the extensive existing scientific use of the 18.6–18.8 GHz (space-to-Earth) band.[52] The Commission has previously concurred with this need,[53] and no further action is appropriate because the 18.6–18.8 GHz band is not one of the additional frequency bands included in this proceeding.[54]

Boeing proposes to open the 19.4–19.6 GHz band to both GSO and NGSO FSS systems, including those operating with ESIMs, on a secondary basis with respect to feeder links to NGSO MSS space stations operating in these frequencies.[55] Boeing argues that GSO and NGSO FSS systems are already permitted to operate below 19.4 GHz and above 19.6 GHz, so the reception of these transmissions by ESIMs will not alter the spectrum sharing conditions.[56] We disagree. As Iridium accurately notes, the Ka-band plan and U.S. Table of Frequency Allocations prohibit any earth station—fixed, in motion, individually-licensed, or blanket-licensed—from communicating with an FSS space station in this frequency band.[57] Further, Iridium points out that this proposal is beyond the scope of the current rulemaking.[58] We agree with Iridium, and find that this proceeding is not the appropriate forum to address Boeing's proposal.

Regulatory Framework for Communications of ESIMs With NGSO Satellites (IB Docket No. 18–315)

In the *ESIMs NGSO NPRM,* the Commission sought comment on allowing ESIMs to communicate with NGSO FSS satellites in the 11.7–12.2 GHz (space-to-Earth); 14.0–14.5 GHz (Earth-to-space); 18.3–18.6 GHz (space-to-Earth); 19.7–20.2 GHz (space-to-Earth); 28.35–28.6 GHz (Earth-to-space); and 29.5–30.0 GHz (Earth-to-space) bands, as well as the 18.8–19.3 GHz (space-to-Earth), and the 28.6–29.1 GHz (Earth-to-space) bands, the 10.7–11.7 GHz (space-to-Earth) bands, the 17.8–18.3 GHz (space-to-Earth) band, and the 19.3–19.4 GHz and 19.6–19.7 GHz (space-to-Earth) bands, [59] which encompass most of the same conventional Ku-band, extended Ku-band, and Ka-band frequencies that were allowed or proposed for communications of ESIMs with GSO FSS satellites.[60] Second, the Commission sought comment on extending blanket earth station licensing, which is available to ESIMs communicating with GSO FSS satellites, to ESIMs communicating with NGSO FSS satellites in frequency bands in which NGSO FSS systems have a primary status, or have been found to be able to operate on a secondary or non-conforming basis, without causing interference to primary users of the bands.[61] Finally, the Commission sought comment on revisions to specific rule provisions to implement these changes.[62]

As a general matter, we conclude that the public interest is served by adopting a regulatory framework for communications of ESIMs with NGSO FSS satellites that is analogous to that which exists for ESIMs communicating with GSO FSS satellites and offers a similar streamlined path to deployment. Given the growing number of NGSO FSS entities that propose to provide service to earth stations at fixed locations as well as to ESIMs,[63] it is important to have streamlined rules in place for NGSO ESIMs operations, both for parity among ESIM operators and regulatory certainty for potential operators.[64] Doing so will facilitate the spread of accessible, broadband

[44] CORF FNPRM Comments at 8.

[45] CORF FNPRM Comments at 9.

[46] SES FNPRM Reply Comments at 2–3.

[47] 47 CFR 25.202(f).

[48] *Further Streamlining Part 25 Rules Governing Satellite Services,* Notice of Proposed Rulemaking, 33 FCC Rcd 11502, 11507–08, paras. 18–19 (rel. Nov. 19, 2018) (*2018 Part 25 Further Streamlining Notice*).

[49] 47 CFR 2.106, US211 and US246.

[50] *See generally* CORF FNPRM Comments.

[51] 47 CFR 2.106, US255.

[52] CORF FNPRM Comments at 10.

[53] *GSO ESIMs Report & Order and FNPRM,* 33 FCC Rcd at 9347–48, para. 63.

[54] We note that GSO FSS space-to-Earth operations are already subject to prior coordination with Federal users in this band pursuant to footnote US334 to the U.S. Table. 47 CFR 2.106, US334.

[55] Boeing FNPRM Comments at 5–6.

[56] *Id.* at 6.

[57] Iridium FNPRM Reply Comments at 1–2.

[58] *Id.* at 2–3.

[59] FSS operation in the 18.6–18.8 GHz band is limited to communications with GSO space stations. 47 CFR 2.106 NG164. Transmissions to NGSO space stations in the 29.25–29.5 GHz band are limited to feeder links to MSS space stations. *See* 47 CFR 2.106 NG535A. Thus, the frequency bands 18.6–18.8 GHz (space-to-Earth) and 29.25–29.5 GHz (Earth-to-space) were not included in the proposed bands for ESIMS NGSO FSS operations.

[60] *NGSO ESIMs NPRM,* 33 FCC Rcd at 11418–19, para. 7; *ESIMs Report and Order* and *Further Notice,* 32 FCC Rcd at Appendix F (proposing frequencies available for ESIMs in a revision to § 25.202(a)(10)).

[61] *NGSO ESIMs NPRM,* 33 FCC Rcd at 11420, para. 15.

[62] The Commission did not seek comment on, and we do not address here, the operations of traditional NGSO satellite constellations offering mobile-satellite service (MSS), such as those operated by Iridium LLC, Globalstar, Inc., or ORBCOMM License Corp.

[63] During the preceding years, licenses or grants of U.S. market access have been given to a number of NGSO FSS satellite providers. *See, e.g., O3b Limited, Request for Modification of U.S. Market Access for O3b Limited's Non-Geostationary Satellite Orbit System in the Fixed-Satellite Service and in the Mobile-Satellite Service,* Order and Declaratory Ruling, 33 FCC Rcd. 5508 (2018); *Space Exploration Holdings, LLC, Application for Approval for Orbital Deployment and Operating Authority for the SpaceX NGSO Satellite System,* Memorandum Opinion, Order and Authorization, 33 FCC Rcd 3391 (2018); *Telesat Petition for Declaratory Ruling to Grant Access to the U.S. Market for Telesat's NGSO Constellation,* Order and Declaratory Ruling, 32 FCC Rcd. 9663 (2017); *WorldVu Satellites Limited, Petition for Declaratory Ruling Granting Access to the U.S. Market for the OneWeb NGSO FSS System,* Order and Declaratory Ruling, 32 FCC Rcd 5366 (2017).

[64] Letter from Ryan W. King, Vice President & Head of Legal, Americas, Speedcast Americas Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Sept. 25, 2019).

mobility services;[65] promote global spectrum harmonization, allow customers to take advantage of seamless connectivity;[66] increase investment in NGSO FSS capacity that can serve remote and rural areas and provide restoration if terrestrial networks are damaged due to natural disasters;[67] and ensure that antenna manufacturers are able to bring their antennas to the market quickly, enabling a faster return on their investment, and thus making the U.S. a desirable market in which to introduce innovative new equipment.[68] We agree with many of the public interest benefits expressed in the record of the proceeding and adopt the framework discussed in the *NGSO ESIMs NPRM.*

Ku- and Ka- Frequency Bands

11.7–12.2 GHz, 14.0–14.5 GHz, 18.3–18.6 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.5–30.0 GHz.—The Commission sought comment on allowing, to the extent feasible, ESIMs to communicate with NGSO FSS systems in the Ku- and Ka-bands where the Commission's rules allow ESIM communications with GSO FSS space stations. The Commission proposed to allow ESIMs to communicate with NGSO FSS systems under the existing primary FSS allocation in the following six frequency bands: 11.7–12.2 GHz (space-to-Earth); 14.0–14.5 GHz (Earth-to-space); 18.3–18.6 GHz (space-to-Earth); 19.7–20.2 GHz (space-to-Earth); 28.35–28.6 GHz (Earth-to-space); and 29.5–30.0 GHz (Earth-to-space).[69] There are no allocations to terrestrial services in any of these bands. Under the Commission's rules, NGSO FSS operations cannot cause interference to, or claim protection from, GSO FSS networks.[70] Accordingly, the Commission sought comment on adding new paragraphs to footnote NG527A of the Table of Frequency Allocations set forth at 47 CFR 2.106 to indicate that ESIMs can operate with NGSO FSS space stations in these six frequency bands.

We adopt the proposal to add a paragraph to footnote NG527A to specify that ESIMs may be authorized to communicate with NGSO FSS satellites in these six bands, with the exception of the 28.35–28.4 GHz band, under the existing primary FSS allocation. Many commenters agree that the Commission should adopt its proposal to allow ESIMs to communicate with NGSO FSS systems on a primary basis in these frequency bands.[71] For example, the ESIM Coalition supports adoption of the proposal to add a paragraph to footnote NG527A to indicate that ESIMs can operate with NGSO FSS satellites in these six frequency bands.[72] This will ensure that the part 25 rules accurately reflect the current NGSO–GSO sharing framework and extend this well accepted framework to NGSO FSS operations with ESIMs.

Some concerns, however, were recently raised about potential interference from out-of-band emissions of ESIMs in the 28.35–28.6 GHz band into the adjacent 27.5–28.35 GHz band used by UMFUS, generated by ESIM transmissions to NGSO FSS space stations in frequencies above 28.35 GHz.[73] Contrarily, others have argued that the Commission already considered and dismissed similar concerns when it authorized ESIMs to communicate with GSO satellites, and the authorization of ESIM communications with NGSOs does not raise any new concerns.[74] Given these differences of opinion, we are initiating a *Further Notice* to further develop the record on these issues. As such, we will not permit ESIM operations with NGSO FSS space stations in the lowest 50 megahertz of the 28.35–28.6 GHz band (28.35–28.4 GHz), subject to further consideration. However, in the interest of avoiding delay in potential ESIMs operations in the remaining 200 megahertz of the 28.35–28.6 GHz band, we will permit the filing and processing of ESIMs applications for use of spectrum between 28.4–28.6 GHz, with any grants conditioned on compliance with any future determinations made in this proceeding. Based on the current record, we do not anticipate that ESIM operations above 28.4 GHz will have a significant out-of-band emissions impact on UMFUS operation below 28.35 GHz.[75] Additionally, should parties have concerns about specific applications for ESIMs use, they can be addressed as part of the public comment review process for each ESIM application filed before the Commission. Before granting any of these applications, the possible need to require more stringent limits than those in § 25.202(f), even for ESIM operations with NGSO FSS space stations above 28.4 GHz, can be considered and addressed as appropriate.

Several commenters believe that the use of the term ''primary'' to describe the status of communications of ESIMs with NGSO FSS satellites in these six bands is potentially confusing because of the need of such communications to protect GSO FSS operations.[76] We clarify here and in the new paragraph (c) to footnote NG527A, that NGSO ESIMs operations in these bands are on an unprotected, non-interference basis only with respect to GSO FSS operations. As Intelsat correctly states, we do not propose to elevate the NGSO protection status vis-à-vis GSO operations.[77] Rather, communications of ESIMs with NGSO FSS satellites is an application in the FSS,[78] which has a primary allocation in these bands.[79] The rules for communications of ESIMs with both NGSO and GSO satellites maintain the existing protection status offered to GSO operations vis-à-vis NGSO operations, which is articulated in the proposed revision to footnote NG527A. In other words, NGSO ESIM operations will be provided the same protections, and have the same obligations, as NGSO FSS already possesses. This includes the obligation for NGSO FSS to protect GSO FSS—including GSO FSS communications to ESIMs—in these frequency bands under part 25 of the Commission's rules.[80]

[65] ESIM Coalition NPRM Comments at 5, SES and O3b NPRM Comments at 1, 3. *See also* Letter from Mariah Dodson Shuman, Corporate Counsel, Project Kuiper, Kuiper Systems LLC to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 26, 2019).

[66] SES and O3b NPRM Comments at 4, 5–6.

[67] *Id.* at 5.

[68] SES and O3b NPRM Comments at 5; Viasat NPRM Comments at 3.

[69] *ESIMs NGSO FSS NPRM,* 33 FCC Rcd at11419, para. 9. T-Mobile asks the Commission to clarify that its proposals in this proceeding will not expand use of ESIM operations in the 3.7–4.2 GHz band. T-Mobile NPRM Comments at 1–3. We so clarify here.

[70] 47 CFR 25.289.

[71] ESIM Coalition NPRM Comments at 2–3; Hughes NPRM Comments at 3.

[72] *See also* SES and O3b NPRM Comments at 7.

[73] Letter from Daudeline Meme, Verizon and US Cellular to Marlene H. Dortch, Secretary, Federal Communications Commission (filed May 4, 2020) (Verizon May 4 Ex Parte Letter).

[74] Letter from Suzanne Malloy, Vice President of Regulatory Affairs for SES Americom, Inc. and O3b Limited, Kimberly M. Baum Vice President, Regulatory Affairs Hughes Network Systems, LLC, and EchoStar Satellite Services, L.L.C. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed May 6, 2020) (SES Americom, Inc. and O3b Limited, Inmarsat, Inc., Hughes Network Systems, LLC, and EchoStar Satellite Services, L.L.C. May 6 Ex Parte Letter); Letter from John P. Janka, Chief Officer, Global Government Affairs & Regulatory, Viasat, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed May 6, 2020) (Viasat May 6 Ex Parte Letter).

[75] As per § 25.202(f), ESIM emissions will be attenuated by approximately 35 dB at 28.35 GHz.

[76] ESIMS Coalition NPRM Comments at 2–3; Intelsat NPRM Reply Comments at 2.

[77] Intelsat NPRM Reply Comments at 2.

[78] *See* U.S. Table of Frequency Allocations, 47 CFR 2.106, n. NG527A.

[79] *Id.*

[80] 47 CFR 25.289 (stating that, unless provided otherwise, ''an NGSO system licensee must not cause unacceptable interference to, or claim protection from, a GSO FSS . . . network'').

Some commenters noted the Commission used the term ''harmful interference'' in some contexts and ''unacceptable interference'' in the NPRM.[81] The specific obligation on NGSO FSS operations is that they do not cause unacceptable interference to GSO FSS networks.[82] We believe that ''unacceptable interference'' is the appropriate term to use here.[83] To the extent that ''harmful interference'' was used elsewhere in the *ESIMs NGSO NPRM,* we clarify that there was no intent to alter the ''unacceptable interference'' obligation.

18.8–19.3 GHz and 28.6–29.1 GHz.— The Commission proposed to allow ESIMs to communicate with NGSO FSS systems on a primary basis in the 18.8–19.3 GHz (space-to-Earth), and the 28.6–29.1 GHz (Earth-to-space) bands. In these bands, there are no terrestrial allocations, and GSO FSS operations are secondary with respect to NGSO FSS. Accordingly, the Commission sought comment on adding a new paragraph (e) to footnote NG527A to indicate that ESIMs can operate both with a GSO FSS space station and with NGSO FSS systems in these two frequency bands, but that GSO FSS operations in these bands must not cause unacceptable interference to, or claim protection from, NGSO FSS networks.[84] We adopt this proposal.

Boeing and other commenters support this proposal.[85] Boeing asserts that the Commission already appropriately treats ESIMs as a permitted application of FSS, employing the same frequency allocation and protection rights as FSS.[86] Hughes, on the other hand, supports permitting NGSO ESIM operation in the 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space) bands, not on a primary basis as the Commission proposes, but ''with a status equal to that of any GSO operation that takes place in the frequency band.'' [87] Hughes notes that, to date, the Commission has authorized use of these bands by GSO FSS on a secondary basis with respect to communications between NGSO systems and fixed earth stations, and that Hughes has successfully entered into coordination agreements with several NGSO system operators to utilize these frequency bands in its GSO satellite networks, with the expectation that coordination would require analysis only of networks with fixed earth stations.[88] According to Hughes, allowing NGSO ESIMs to operate on a primary basis would complicate the ability of GSO licensees to seek coordination agreements with NGSO systems that will allow these frequency bands to be used with maximum efficiency.[89] Therefore, Hughes argues the Commission should permit all GSO operations and ESIM NGSO operations to have equal status, with each having secondary status with respect to fixed earth stations communicating with NGSO satellites in these frequency bands.[90]

We agree with Boeing that Hughes' proposal overreaches with respect to the appropriate regulatory treatment of ESIMs operating in the 18.8–19.3 GHz (space-to-Earth) and the 28.6–29.1 GHz (Earth-to-space) bands.[91] As Hughes acknowledges, these frequency bands constitute one of the few FSS allocations where NGSO FSS systems have priority over GSO FSS networks.[92] Nonetheless, Hughes urges the Commission to treat ESIMs operations with NGSO FSS systems as co-equal with GSO FSS networks in this spectrum.[93] As the Commission has stated, ''limiting the primary designation in these frequency bands to NGSO FSS systems will give operators of these systems greater flexibility in the coordination discussions and ultimate deployment.'' [94] Further, we agree with Boeing that Hughes' private agreements with certain NGSO FSS operators are immaterial to Commission policy regarding the rights of future NGSO FSS systems.[95] Accordingly, we decline to lower the status of ESIMs communicating with NGSO FSS satellites below that of other earth stations communicating with NGSO FSS satellites.

Viasat argues that the Commission must ensure that any primary NGSO ESIM operations that may be allowed in the 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space) band segments within the United States do not impact GSO operations outside of the United States, where GSO and NGSO systems are co-primary and are subject to ITU coordination requirements.[96] Similarly, Hughes requests that the Commission clarify that while GSO operations are secondary to NGSO operations in the United States in these frequency bands, the services are co-primary outside the United States.[97] As has been the Commission's policy in other situations involving operations outside the United States, ESIM operations in a NGSO FSS system licensed by the United States will: (i) Have higher status than operations in a GSO FSS satellite network licensed by the United States anywhere in the world; (ii) have higher status than operations in a GSO FSS satellite network that holds a grant to access the U.S. market only for communications to or from the U.S. territory; and (iii) be co-primary with a GSO FSS satellite network in all other cases.[98]

In addition, CORF raises concerns regarding the Earth exploration-satellite service co-primary allocation at 18.6–18.8 GHz (space-to-Earth).[99] Specifically, CORF is concerned that NGSO ESIM operations in 18.3–18.6 GHz (space-to-Earth) and 18.8–19.3 GHz (space-to-Earth) may contaminate Earth exploration-satellite service observations, as radio interference from moving targets is even more difficult to flag and remove than interference from fixed stations.[100] CORF also notes that increased usage of the adjacent bands may degrade this band if out-of-band emissions are not severely curtailed.[101] CORF raised similar arguments against operation in these bands in the context of ESIM operation with GSO FSS satellites. As we noted in addressing their arguments there, CORF's concerns are not with ESIMs, which solely receive in the frequency bands that CORF identified as being of concern, but rather with the space-to-Earth

[81] ESIMs Coalition NPRM Comments at 3; SES and O3b NPRM Comments at 8; Intelsat NPRM Reply Comments at 3.

[82] 47 CFR 25.289.

[83] *See* 47 CFR 25.289; *ESIMs NGSO FSS NPRM,* 33 FCC Rcd at 11425–28, App. A. (The Commission used the term ''unacceptable interference'' in proposed footnote NG527A).

[84] *ESIMs NGSO FSS NPRM,* 33 FCC Rcd at 11419, para. 10.

[85] *See* Boeing NPRM Comments at 7; ESIM Coalition at 3; SES and O3b NPRM Comments at 8.

[86] Boeing NPRM Comments at 7.

[87] Hughes NPRM Comments at 4.

[88] *Id.*

[89] *Id.* at 4–5.

[90] *See* Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes Network Systems, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 18–315, at 2 (Apr. 19, 2019).

[91] Boeing NPRM Reply Comments at 2.

[92] Hughes NPRM Reply Comments at 4. As Boeing notes, Hughes does not explain how its proposal for co-equal status would work. Presumably, however, Hughes' existing Ka-band GSO FSS operations would have first-in-time priority over ESIMs operating with NGSO FSS systems given the fact that ESIMs are not yet authorized in this spectrum. Boeing NPRM Reply Comments at 3.

[93] Hughes NPRM Comments at 4.

[94] *See Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters,* Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7809, 7814–15, ¶ 14 (2017) (*NGSO FSS Report and Order*).

[95] Boeing NPRM Reply Comments at 3.

[96] Viasat NPRM Comments at 5.

[97] Hughes NPRM Reply Comments at 1–2.

[98] *NGSO FSS Report and Order,* 32 FCC Rcd at 7814–15, para. 14.

[99] *See* CORF NPRM Comments.

[100] *Id.* at 12.

[101] *Id.* at 13.

transmissions of NGSO satellites, which are not the subject of this rulemaking.[102] Therefore, as before, we note that the Commission's rules already impose specific limits on out of band emissions.

Kymeta argues for even further streamlining than the Commission has proposed.[103] For example, in the case of existing licensees seeking to operate with NGSO satellite systems on a primary basis in the 28.6–29.1 GHz (Earth-to-space) band, Kymeta states that no additional technical information should be required.[104] Further, Kymeta requests the Commission to find that for existing licensees seeking to operate with NGSO satellite systems on a primary or secondary basis in all other authorized Ku-band and Ka-band frequencies, the only additional technical showing required would be a demonstration that the ESIM complies with the equivalent power flux density up limits referenced in § 25.289. While other commenters do not oppose Kymeta's proposals as a general matter, commenters disagree about the specific technical showing that should be required.[105] We note that such proposals are well beyond the current rulemaking. Moreover, any showing of the kind proposed by Kymeta would be more appropriately provided by the licensee of the NGSO FSS system since equivalent power flux density limits refer to the aggregate of all emissions within the system. We therefore decline to adopt Kymeta's proposals at this time.

10.7–11.7 GHz.—The Commission sought comment on allowing ESIMs to receive signals from NGSO FSS space stations in the 10.7–11.7 GHz (space-to-Earth) band, on an unprotected basis, with respect to transmissions from non-Federal fixed service stations. FSS and fixed service are co-primary in these frequency bands, and receive terrestrial stations are protected by existing power flux density limits on space station transmissions.[106] Accordingly, the Commission sought comment on revising paragraph (a) of footnote NG527A to indicate that ESIMs can operate with NGSO FSS systems on an unprotected basis with regard to non-Federal fixed service in this frequency band. Many commenters support this proposal.[107] Also, in this frequency band, NGSO FSS operations must not cause unacceptable interference to, or claim protection from, GSO FSS networks.[108] Boeing states that the downlink transmissions from NGSO FSS satellites to ESIMs will be indistinguishable from existing NGSO FSS downlink transmissions.[109] We agree with Boeing and find that the operation of ESIMs in this band will be indistinguishable from other NGSO FSS operations. Because the mechanisms the Commission already has in place to protect GSO FSS networks from NGSO FSS will also provide protection against NGSO ESIM operations, we adopt the revisions proposed to paragraph (a) of footnote NG527A, which will allow ESIMs to operate on an unprotected basis with regard to non-Federal fixed service in this frequency band.[110]

CORF asserts that there is a significant risk of interference to radio astronomy observations from downlinks in the 10.7–11.7 GHz band.[111] We agree that protection of these services is important but find that existing protections are sufficient to guard against interference to radio astronomy operations. CORF suggests protection of the primary allocation of Earth exploration-satellite service in the 10.68–10.70 GHz portion of the frequency band either through use of a guard band of 25 megahertz, so that the lowest frequency of this ESIM downlink band would be 10.725 GHz, or through use of a more stringent out-of-band emission standard for ESIM downlinks to protect Earth exploration-satellite service observations in the 10.68–10.70 GHz band.[112] As CORF notes, however, radio astronomy service observations in the 10.6–10.7 GHz band[113] are already entitled to protection under the Commission's rules,[114] as established by footnote US74, which states that ''the radio astronomy service shall be protected from unwanted emissions only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with the technical standards or criteria applicable to the service in which it operates.''[115] Since our actions today do not change this balance that the rules strike, and since the question of modifying the current protection of radio astronomy observation is part of an ongoing Commission proceeding regarding out-of-band-emissions,[116] the appropriate forum to address these requests is that proceeding. Accordingly, we decline to address those requests here. CORF also asks the Commission to include a requirement for NGSO operators transmitting in the 10.7–11.7 GHz band to coordinate with radio astronomy observatories; however, as CORF acknowledges, such a requirement is already included in footnote US131.[117]

17.8–18.3 GHz.—The Commission sought comment on allowing ESIMs to receive signals from NGSO FSS systems on a secondary basis in the 17.8–18.3 GHz (space-to-Earth) band. This frequency band is allocated to the fixed service on a primary basis and, given the FSS secondary status, ESIM receive earth stations are not entitled to protection. Protection of terrestrial operations in this band will be ensured by imposing on space station transmissions the appropriate power flux density limits.[118] Accordingly, the Commission sought comment on adding a paragraph to footnote NG527A to indicate that ESIMs can operate on a secondary basis with regard to non-Federal fixed service in this frequency band, both with a GSO FSS space station and with NGSO FSS systems.[119]

The ESIM Coalition and other commenters support the proposal to allow ESIMs to receive signals from

[102] *See supra* para. 22.

[103] Kymeta NPRM Comments at 4–5.

[104] *Id.* at 4.

[105] *See, e.g.* SES NPRM Reply Comments at 8.

[106] 47 CFR 25.146(a)(1).

[107] Boeing NPRM Comments at 8; Hughes NPRM Comments at 5; Kepler NPRM Comments at 2; Viasat NPRM Comments at 4.

[108] 47 CFR 25.289. Commenters here again raise the issue of use of the term ''unacceptable interference'' versus ''harmful interference'' in the NPRM. *See, e.g.,* SES and O3b NPRM Comments at 8. This issue is addressed at paragraph 30, *supra.*

[109] Boeing NPRM Comments at 8.

[110] Consistent with our decision in paragraph 8 above, we revise footnote NG527A to allow ESIMs to communicate with NGSO satellites, subject to the conditions that ESIMs may not claim protection from transmissions from non-Federal fixed service stations and that NGSO FSS systems may not cause unacceptable interference to, or claim protection from, GSO FSS networks. *See* Appendix B, NG527A.

[111] CORF NPRM Comments at 8.

[112] *Id.* at 9–10.

[113] As we note in fn 27, CORF mentions 10.6–11.7 GHz on page 7 of its FNPRM Comments. However, it is clear from the context that their intention was to reference the 10.6–10.7 GHz band which has a primary allocation to the Radio Astronomy Services. 47 CFR 2.106.

[114] *Id.* In the 10.68 GHz-10.70 GHz portion of the frequency band, radio astronomy service has a primary allocation and is protected domestically by footnote US246, and by RR No. 5.340 worldwide. Pursuant to US246, ''[n]o station shall be authorized to transmit'' at 10.68–10.7 GHz, and pursuant to RR 5.340, ''[a]ll emissions are prohibited'' at 10.68–10.7 GHz. *See* 47 CFR 2.106, US246. Similarly, in footnote US211, applicants for airborne or space station assignments at, among other frequency bands, 10.7–11.7 GHz, are urged to take all practicable steps to protect radio astronomy observations in the adjacent bands from harmful interference. 47 CFR 2.106, US211; *see also* 47 CFR 2.106, US131 (requiring prior coordination with specific radio astronomy service sites).

[115] 47 CFR 2.106, US74.

[116] CORF NPRM Comments at 9–10. *See 2018 Part 25 Further Streamlining Notice,* 33 FCC Rcd at 11507–08, paras. 18–19.

[117] CORF NPRM Comments at 8–9; 47 CFR 2.106, US131.

[118] 47 CFR 25.146(a)(1).

[119] In this band, NGSO FSS operations must not cause unacceptable interference to, or claim protection from, GSO FSS networks. *See* 47 CFR 25.289.

NGSO FSS space stations on a secondary basis in the 17.8–18.3 GHz (space-to-Earth) band, and no commenter opposed this proposal.[120] As the Commission explained in the *NGSO ESIMs NPRM,*[121] NGSO ESIMs can ensure adequate protection of terrestrial operations via compliance with the existing International Telecommunication Union power flux density limits, currently codified in the Commission's rules.[122] Accordingly, we adopt the proposed addition of paragraph (d) to footnote NG527A.

19.3–19.4 GHz and 19.6–19.7 GHz.— The Commission sought comment on allowing ESIMs to receive signals from NGSO FSS space stations in the 19.3–19.4 GHz and 19.6–19.7 GHz (space-to-Earth) bands, on an unprotected basis, with respect to transmissions from non-Federal fixed service stations. FSS and fixed service are co-primary in these frequency bands, and receive terrestrial stations are protected by imposing the appropriate power flux density limits on space station transmissions.[123] In addition, NGSO FSS operations must not cause unacceptable interference to, or claim protection from, GSO FSS networks.[124] Accordingly, the Commission sought comment on revising footnote NG527A to indicate that ESIMs can operate with NGSO FSS systems in these two frequency bands on an unprotected basis with regard to non-Federal fixed service. The Commission also proposed revisions to footnote NG527A to indicate that ESIMs can operate with NGSO FSS systems in these two frequency bands, provided that NGSO FSS operations not cause unacceptable interference to, or claim protection from, GSO FSS satellite networks.[125] Commenters support all of these proposals and raise no concerns.[126]

Accordingly, we further revise paragraph (a) of footnote NG527(A) to state that NGSO ESIM operations in the 19.3–19.4 GHz and 19.6–19.7 GHz (space-to-Earth) bands may be authorized on an unprotected basis with respect to fixed service and NGSO FSS systems operating with ESIMs may be authorized on an unprotected, non-interference basis with respect to GSO FSS satellite networks.[127]

Additional Frequency Bands

Several parties filed comments requesting that we consider including frequency bands that were not proposed in the *NGSO ESIMs NPRM.* Boeing states that the Commission should permit GSO and NGSO ESIMs in every frequency band that is allocated for use by FSS.[128] SES encourages the Commission to consider NGSO ESIMs matters as part of any future proceeding developing service rules for ''V-band'' FSS in the 37.5–52.4 GHz range of frequencies.[129] Other commenters ask that the Commission authorize NGSO systems to support ESIMs in additional space-to-Earth frequency bands including 12.2–12.7 GHz, and throughout the V-band.[130] While some other parties join these proposals, other commenters oppose them.[131] For example, Iridium strongly objects to proposals to include the 19.4–19.6 GHz and the 29.1–29.5 GHz bands, arguing that these bands are beyond the scope of this proceeding.[132] MDS Operations argues that allowing NGSO ESIM links in the 12.2–12.7 GHz band would create insurmountable coordination challenges for incumbent licensees.[133] The MVDDS 5G Coalition concurs.[134] Specifically, they assert that ensuring that the 12.2–12.7 GHz band remains free of ESIMs communications with NGSO FSS satellites would protect in-band terrestrial services and preserve the possibility of future two-way mobile 5G services.[135] CTIA asserts that permitting ESIM operations in the UMFUS bands would be inconsistent with the carefully calibrated framework the Commission adopted in the *Spectrum Frontiers* proceeding,[136] which allows for limited siting of new earth stations under very specific rules.[137]

These additional frequency bands were not included in this proceeding, and the record is insufficient for us to consider use of these bands for ESIMs communications with NGSO FSS satellites. Moreover, allowing ESIMs to transmit in the UMFUS bands would be inconsistent with the Commission's decisions adopted in the *Spectrum Frontiers* proceeding. Accordingly, we decline to include these additional frequency bands in the rules adopted in this proceeding.

Blanket Licensing

In the *NGSO ESIMs NPRM,* the Commission proposed extending blanket licensing for communications of ESIMs with NGSO FSS systems since such licensing would be limited to frequency bands in which NGSO FSS systems have a primary status or have been found to be able to operate on a secondary or non-conforming basis without causing interference to primary users of those bands. The Commission sought comment on extending blanket licensing to ESIMs operating with NGSO FSS space stations in all the frequency bands being proposed here for ESIM NGSO operation.

Commenters were uniformly supportive of blanket licensing.[138] Commenters argue that blanket licensing would be more efficient than individually licensing ESIM terminals,[139] and that individual licensing is only necessary to facilitate site-by-site coordination, which is not needed for terminals in-motion, which employ technical means to operate on a shared basis with other spectrum users.[140] In the past, the Commission has granted blanket licenses to ESIMs communicating with GSO FSS satellites for each specific type of ESIM–Earth Stations on Vessels, Vehicle-Mounted Earth Stations, and Earth Stations Aboard Aircraft– concluding that

[120] Boeing NPRM Comments at 10; ESIM Coalition NPRM Comments at 4; SES and O3b NPRM Comments at 8; Viasat Comments at 4.

[121] *ESIMs FSS NGSO NPRM,* at para. 13.

[122] ESIM Coalition NPRM Comments at 4; *see also* 47 CFR 25.146(a)(1).

[123] 47 CFR 25.146(a)(1).

[124] 47 CFR 25.289.

[125] *ESIMs NGSO NPRM,* 33 FCC Rcd at 11420, para. 12.

[126] Boeing NPRM Comments at 8; ESIM Coalition NPRM Comments at 4; OneWeb NPRM Comments at 10; SES and O3b NPRM Comments at 8; Viasat NPRM Comments at 4.

[127] *See* Appendix B, NG527A.

[128] Boeing FNPRM Comments at 1.

[129] SES and O3b NPRM Comments at 9; SES and O3b NPRM Reply Comments at 6–7.

[130] Boeing NPRM Reply Comments at 1; Viasat NPRM Comments at 3; WorldVu NPRM Comments at i–ii, 3–7, WorldVu NPRM Reply Comments at 1–3.

[131] MDS Operations support the Commission's proposal to exclude the 12 GHz MVDDS band from the bands in which ESIMs may communicate with NGSOs. MDS Operations NPRM Reply Comments at 2. MDS Operations asserts that allocation for ESIM use in the 12 GHz band would stymie investment and innovation for MVDDS use. *Id.*

[132] *See generally* Iridium NPRM Reply Comments.

[133] MDS NPRM Reply Comments at 3–4.

[134] MVDDS 5G Coalition NPRM Reply Comments at 1–4.

[135] *Id.* at 1.

[136] *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al., Report and Order and Further Notice of Proposed Rulemaking,* 31 FCC Rcd 8014 (2016); *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.,* Second Report and Order and Order on Reconsideration, 32 FCC Rcd 10988 (2017); *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.,* Third Report and Order, 33 FCC Rcd 5576 (2018); *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.,* Fifth Report and Order, 34 FCC Rcd 2556 (2019).

[137] Letter from Jennifer L. Oberhausen, Director, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, Federal Communications Commission (filed May 1, 2020) (CTIA May 1 Ex Parte Letter) at 2; Letter from Jennifer L. Oberhausen, Director, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, Federal Communications Commission (filed May 6, 2020) (CTIA May 6 Ex Parte Letter).

[138] ESIM Coalition NPRM Comments at 5; Kymeta NPRM Comments at 2–3; SES and O3b NPRM Comments at 10; WorldVu NPRM Comments at 10–11; Boeing NPRM Comments at 12–13.

[139] ESIM Coalition NPRM Comments at 5.

[140] Kymeta NPRM Comments at 2–3.

blanket licensing would be far more effective and administratively efficient than employing an individual licensing approach for these types of earth stations.[141] We find that the proposed blanket licensing does not pose any increased risk of harmful interference and that the reasons that blanket licensing is appropriate for communications of these terminals with GSO FSS satellites applies equally to communications of such terminals with NGSO FSS systems. Accordingly, we conclude that blanket licensing is appropriate for communications of ESIMs with NGSO FSS satellites and adopt this proposal.[142]

Implementing Rule Revisions

In the paragraphs below, we address other changes to our rules, in addition to those discussed above in connection with the frequency bands being proposed for NGSO FSS ESIM operation. The Commission sought comment on these changes, and on any other revisions necessary to implement the ESIM NGSO FSS operations described here.[143]

Section 25.202. The Commission sought comment on amending the list of frequencies available to ESIMs in § 25.202(a)(8), (a)(10), and (a)(11) to reflect changes made in this *Report and Order* to frequency bands in which ESIMs can communicate with NGSO FSS satellites.[144] Other than the objections to the 28.35–28.6 GHz band discussed above, there were no objections to this change, and we amend § 25.202, with the exception of 28.35–28.4 GHz, also taking into account the additional frequencies made available for ESIM operation with GSO FSS satellites, as specified in section III.A of this *Report and Order.*

Section 25.115. The Commission sought comment on changes to extend the rules adopted for GSO FSS ESIMs to NGSO FSS ESIMs, with the appropriate conforming technical changes. Specifically, comment was sought on excluding NGSO ESIMs from rules that pertain to ''two-degree spacing'' [145] for GSO FSS space stations.[146] Comment was also sought on adding a new paragraph (o) to § 25.115 to codify these requirements for ESIMs that communicate with NGSO FSS space stations.[147] The Commission also sought comment on changing the cross-references contained in the information requirements for earth station applications set forth in § 25.115 for earth stations communicating with GSO and NGSO FSS space stations. All commenters who addressed this issue support this approach and agree that the rules should exclude NGSO ESIMs from the application of off-axis Equivalent Isotropically Radiated Power (EIRP) density requirements for two-degree spaced GSO FSS earth stations.[148] We adopt these conforming revisions with a small modification to take into account that § 25.115(e)(2) is limited to GSO FSS earth stations.

Finally, the Commission's Ka-band Plan has a secondary designation for NGSO FSS operations in the 29.5–30.0 GHz band, as described in the *NGSO FSS Order.*[149] The licensing provisions in § 25.115(f) adopted in the *NGSO FSS Order,* however, inadvertently omitted the 29.5–30.0 GHz band.[150] In the *NGSO ESIMS NPRM,* the Commission proposed to correct this omission and proposed to extend the provisions of § 25.115(f) to the 29.5–30.0 GHz band. Commenters did not address this specific point. We adopt the revision to correct the omission consistent with the Ka-band Plan as previously adopted by the Commission.

Section 25.228. Section 25.228 contains requirements in paragraphs (a), (b), and (c), that codify the two-degree spacing requirements for ESIMs communicating with GSO FSS satellite networks, but the paragraphs are not specifically worded to apply only to such ESIMs. The Commission sought comment on adopting revisions to clarify that these paragraphs apply only to ESIMs communicating with GSO FSS satellite networks.[151]

Intelsat notes that the proposed changes may have been interpreted differently by different commenters,[152] and Kepler states that further clarification may be necessary because of the separate purposes these rules address.[153] Despite this disagreement, commenters are uniformly concerned that the proposed revision eliminates the NGSO ESIM self-monitoring and network monitoring and control requirements,[154] and many commenters argue against adding language specifying that § 25.228(a), (b), and (c) are GSO-specific. The ESIM Coalition, for example, believes ESIM terminal self-monitoring and network control and monitoring center requirements are essential to ensuring operations are conducted in accordance with applicable license provisions, consistent with the ESIM rules, and without causing interference to other satellite and earth station operations. They argue that there is no basis to treat GSO FSS and NGSO FSS ESIMs differently with respect to these important requirements.[155] Eutelsat concurs, stating this revision appears to suggest elimination of self-monitoring and

[141] *Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands,* IB Docket No. 02–10, Report and Order, 20 FCC Rcd 674, 722, para. 115 (2005); *Amendment of Parts 2 and 25 of the Commission's Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed-Satellite Service,* IB Docket No. 07–101, Report and Order, 24 FCC Rcd 10414, 10464, para. 162 (2009); *Revisions to Parts 2 and 25 of the Commission's Rules to Govern the Use of Earth Stations Aboard Aircraft Communicating with Fixed-Satellite Service Geostationary-Orbit Space Stations Operating in the 10.95–11.2 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz and 14.0–14.5 GHz Frequency Bands,* IB Docket No. 12–376, Report and Order, 27 FCC Rcd 16510, 16550, para. 104 (Dec. 28, 2012).

[142] SES and O3b ask for confirmation that when the Commission stated in the *NGSO ESIMs NPRM* that ''ESIMs' communications with NGSO FSS systems would be limited to frequency bands in which NGSO FSS systems have a primary status, or have been found to be able to operate on a secondary or non-conforming basis, without causing interference to primary users of those bands,'' the Commission was referring to the frequency bands to be authorized for NGSO ESIMs through this proceeding. SES and O3b NPRM Comments at 10. SES and O3b state that such a confirmation would remove any concern that the Commission intends to require a separate compatibility showing for a given frequency band to be eligible for blanket licensing. To the extent such a confirmation is necessary, we so confirm here.

[143] *ESIMs NGSO FSS NPRM,* 33 FCC Rcd at 11422, paras. 16–21. The Commission stated that there would not be significant cost associated with the rule changes for NGSO ESIMs but invited comment to help with the costs and benefits analysis. *See ESIMs NGSO FSS NPRM,* 33 FCC Rcd at 11422, para. 23. No comments were received.

[144] The Commission released an Erratum on December 20, 2018 to correct the *ESIMs NGSO NPRM* which initially suggested revisions to, rather than removal of, § 25.202(a)(11). *See Erratum to the ESIMs NGSO FSS NPRM.*

[145] ''Two-degree spacing'' refers to angular separation in the GSO arc between adjacent co-frequency space stations. *See Comprehensive Review of Licensing and Operating Rules for Satellite Services,* Second Report and Order, 30 FCC Rcd 14713, 14747, para. 92 (2015).

[146] Sections 25.115(l)–(n) contain requirements in paragraphs (1), (2), and (3)(i) that pertain to the two-degree spacing rules for ESIMs communicating with GSO FSS space stations, which are not applicable to NGSO systems. The requirements in paragraphs (3)(ii)–(iv) of this section, however, are also appropriate for ESIMs operating in NGSO FSS systems.

[147] *ESIMs NGSO NPRM,* 33 FCC Rcd at 11421, para. 18.

[148] ESIM Coalition NPRM Comments at 5–6; Viasat NPRM Comments at 6.

[149] *NGSO FSS Report and Order,* 32 FCC Rcd at 7813, para. 9.

[150] *ESIMs NGSO NPRM,* 33 FCC Rcd at 11421, para. 21.

[151] *Id.* at para. 19.

[152] Intelsat NPRM Reply Comments at 3.

[153] Kepler NPRM Comments at 1–2, and n4.

[154] *See* ESIM Coalition at 5–6; Eutelsat at 2; SES at 9; Intelsat NPRM Reply Comments at 3.

[155] ESIM Coalition NPRM Comments at 5–6. *See also* Eutelsat NPRM Comments at 2.

network control and monitoring center requirements for NGSO FSS ESIMs.

We agree with these concerns. Therefore, we adopt modified language to ensure that GSO and NGSO FSS ESIM operators comply with the same general monitoring and control requirements, and limit applicability to GSO ESIMs only for § 25.228(a). Specifically, to confirm the applicability of §§ 25.228(b) and 25.228(c) to both GSO and NGSO FSS ESIMs, we do not include the word ''GSO'' in the initial sentence, and include clauses specifically applicable to GSO and NGSO in the remaining text of the rule.[156] We agree with commenters that there should be parity between the GSO and NGSO ESIM self-monitoring and network monitoring and control requirements.[157] We also agree with commenters that self-monitoring and network monitoring and control requirements are necessary to ensure operations are in accordance with the Commission's rules and licensing conditions.[158]

Relatedly, we note that the adoption of the § 25.228 rules in the *GSO ESIMs Report & Order and FNPRM* inadvertently created an inconsistency with regard to network control and monitoring centers for Earth Stations on Vessels.[159] Specifically, in that decision, the Commission adopted § 25.228(e)(1) which states, in part, that Earth Stations on Vessels operators must control Earth Stations on Vessels by a network control and monitoring center located in the United States, but it fails to include the option of using an equivalent facility, as § 25.228's paragraph (c) does for ESIMs.[160] Because Earth Stations on Vessels are a type of ESIM, and because § 25.228(c) as adopted in the *GSO ESIM R&O* already provided that ''[e]ach ESIM must be monitored and controlled by a network control and monitoring center (NCMC) *or equivalent facility,*'' the addition of ''equivalent facility'' to the language in § 25.228(e)(1) simply conforms the two provisions of the rules in accordance with the *GSO ESIM Report & Order.*[161] Therefore, we fix that inconsistency here by adding the phrase ''or equivalent facility'' (which appears in § 25.228(c)) to § 25.228(e)(1), to state that Earth Stations on Vessels operators must control all Earth Stations on Vessels by a network control and monitoring center or equivalent facility located in the United States.[162]

Kepler argues that further clarification may be required on how various systems should operate their ESIMs, and in particular notes that a satellite network need not be controlled in ''real-time'' from a network control and monitoring center, but may instead rely either on Artificial Intelligence (''AI'') or predetermined rules in order to mitigate interference as it relates to aggregate EIRP.[163] Kepler further asserts that while this does not preclude the requirement for a network control and monitoring center, it should be clarified that operations without bent-pipe architecture may implement alternate safety measures, and could use the satellite itself as an ''equivalent facility.''[164] Although we agree that technology may evolve to such a point in the future, we find that such a discussion is beyond the scope of this rulemaking.

Paragraph (j) of § 25.228 is explicitly limited to ESIMs transmitting to GSO FSS satellites, and the Commission sought comment on revising the language of the rule to apply to Ku-band ESIMs communicating with NGSO FSS space stations as well.[165] Additionally, in the 14.0–14.2 GHz (Earth-to-space) band, there is a secondary allocation to the Space Research service. In order to ensure compatibility with Space Research operations, the Commission sought comment on modifying § 25.228(j) to extend to NGSO FSS systems conditions that currently apply to ESIM operation with GSO FSS space stations.[166] CORF asserts that since radio astronomy observatories are just as vulnerable to interference from NGSO uplinks as from GSO uplinks, the Commission should modify the text of § 25.228(j) to apply the same coordination requirement to NGSO operators.[167] Viasat agrees with the Commission and CORF that such a requirement would be reasonable.[168] We adopt the revision.

Section 25.103. Consistent with these changes, the Commission proposed to amend the definitions of Earth Stations on Vessels, Vehicle-Mounted Earth Stations, and Earth Stations Aboard Aircraft in § 25.103, which restrict communications to ''geostationary-orbit FSS space stations.''[169] Pursuant to what was described above, Earth Stations on Vessels, Vehicle-Mounted Earth Stations, and Earth Stations Aboard Aircraft would also be permitted to operate in NGSO FSS systems. Accordingly, the Commission sought comment on removing the word ''geostationary-orbit'' from these definitions. No commenters objected to this change, and we adopt it herein.

Additional conforming changes. Pursuant to changes to part 25 of the Commission's rules in another proceeding,[170] we take this opportunity to eliminate cross-references to § 25.223, which has been removed and reserved. Specifically, we delete the cross references in §§ 25.103, *Routine processing or licensing,* 25.115(g)(1)(vii), and 25.209(f).[171] Further, we add text in § 25.218(a) and (j) to incorporate the 24.75–25.25 GHz band that had been included in the now reserved § 25.138.[172]

Additionally, we take this opportunity to harmonize the language of the revisions to § 25.115(l)(3)(i)–(n)(3)(i) adopted in the *GSO ESIMs Report & Order and FNPRM* with the text of that decision.[173] Specifically, in the *GSO ESIMs Report & Order and FNPRM,* we stated that § 25.115(l)(3)(i)–(n)(3)(i) would require all applicants to ''provide a certification that the ESIM system is capable of detecting and automatically ceasing emissions when an individual ESIM transmitter exceeds the relevant off-axis EIRP spectral density limits specified in § 25.218, or the limits provided to the target satellite operator for operation under § 25.220.''[174] However, in the text of the rules, we

[156] *See* § 25.228(b) and (c) in Appendix B of the Report and Order.

[157] ESIM Coalition NPRM Comments at 5–6; Eutelsat NPRM Comments at 2; SES NPRM Reply Comments at 9; Intelsat NPRM Reply Comments at 3; WorldVu NPRM Reply Comments at 4.

[158] Intelsat NPRM Reply Comments at 3.

[159] *GSO ESIM Report & Order,* 33 FCC Rcd at Appendix B.

[160] *See* 47 CFR 25.228(c) and (e).

[161] *GSO ESIM Report & Order,* 33 FCC Rcd 9327.

[162] *See* Appendix B (setting forth amendments adopted herein to 47 CFR 25.228(e)) (emphasis added). Because this change is editorial and non-substantive, we find good cause to conclude that notice and comment are unnecessary for its adoption. *See* 5 U.S.C. 553(b)(B).

[163] Kepler NPRM Comments at 2.

[164] *See also* Kepler NPRM Comments at 2.

[165] *ESIMs NGSO NPRM,* 33 FCC Rcd at 11421, para. 19.

[166] *Id.* at 11419, para. 9.

[167] CORF NPRM Comments at 11.

[168] Viasat NPRM Reply Comments at 7–8.

[169] *ESIMs NGSO NPRM,* 33 FCC Rcd at 11421, para. 20; 47 CFR 25.103.

[170] *Spectrum Frontiers Third Report and Order,* 33 FCC Rcd 5576 (2018).

[171] Because these changes are editorial and non-substantive, we find good cause to conclude that notice and comment are unnecessary for their adoption. *See* 5 U.S.C. 553(b)(B).

[172] In the *Spectrum Frontiers Third Report and Order,* the Commission amended § 25.138 of the Commission's rules to include the 24.75–25.25 GHz band vis-à-vis GSO FSS earth station licensing requirements. 33 FCC Rcd 5576. Based on the timing of rules becoming effective, that section was subsequently ''reserved'' in the Code of Federal Regulations. *See GSO ESIM Report & Order,* 33 FCC Rcd 9327, 33 FCC Rcd at Appendix B. Therefore, bringing the adopted edits into the appropriate rule section is a simple ministerial update. As such, we find good cause to conclude that notice and comment are unnecessary for their inclusion. *See* 5 U.S.C. 553(b)(B).

[173] *GSO ESIMs Report & Order and FNPRM,* 33 FCC Rcd at 9351, para. 75.

[174] *Id.* (emphasis added).

stated that an application would need to certify that ''an individual ESIM transmitter '' meets these requirements.[175] The revisions here conform the text of the rule to the language of the *Order* regarding ''systems,'' and therefore they are editorial and non-substantive changes.[176]

Final Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.* (RFA), the Commission's Final Regulatory Flexibility Analysis (FRFA) on the possible significant economic impact on small entities of the policies and rules was addressed in this *Second Report and Order* in IB Docket No. 17–95 and *Report and Order* in IB Docket No. 18–315,. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Second Report and Order* in IB Docket No. 17–95 and *Report and Order* in IB Docket 18–315, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Paperwork Reduction Act. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, 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).

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Second Report and Order* in IB Docket No. 17–95 and *Report and Order* in IB Docket 18–315 and *Further Notice of Proposed Rulemaking* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

It Is Ordered, pursuant to sections 4(i), 7(a), 303, 308(b), and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303, 308(b), 316, that this *Second Report and Order* in IB Docket No. 17–95 and *Report and Order* in IB Docket No. 18–315 *Is Adopted,* the policies, rules, and requirements discussed herein *Are Adopted,* and parts 2 and 25 of the Commission's rules *Are Amended* as set forth in Appendix B.

It Is Further Ordered that the rules and requirements adopted in the *Second Report and Order* in IB Docket No. 17–95 and *Report and Order* in IB Docket No. 18–315 *Will Become Effective* 30 days from the date of publication in the **Federal Register**.

It Is Further Ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall Send* a copy of this *Second Report and Order* in IB Docket No. 17–95 and *Report and Order* in IB Docket No. 18–315 and *Further Notice of Proposed Rulemaking,* including the Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

It Is Further Ordered that the Commission, *Shall Send* a copy of this *Second Report and Order* in IB Docket No. 17–95 and *Report and Order* in IB Docket No. 18–315 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Radio, Table of frequency allocations.

47 CFR Part 25

Administrative practice and procedure, Earth stations, Satellites.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 25 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Pages 52 and 53 are revised.

■ b. In the list of Non-Federal Government (NG) footnotes, footnote NG527A is revised.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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[175] *See, e.g.,* 47 CFR 25.115(l)(3)(i).

[176] *See* Appendix B, Final Rules.

15.63-15.7 RADIOLOCATION 5.511E 5.511F AERONAUTICAL RADIONAVIGATION			15.63-15.7 RADIOLOCATION 5.511E 5.511F US511E AERONAUTICAL RADIONAVIGATION US260 US211	15.63-15.7 AERONAUTICAL RADIONAVIGATION US260 US211 US511E	Aviation (87)
15.7-16.6 RADIOLOCATION 5.512 5.513			15.7-16.6 RADIOLOCATION G59	15.7-17.2 Radiolocation	Private Land Mobile (90)
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17.1-17.2 RADIOLOCATION 5.512 5.513			17.1-17.2 RADIOLOCATION G59		
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17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 (space-to-Earth) 5.516A 5.516B Radiolocation 5.514	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 BROADCASTING-SATELLITE Radiolocation 5.514 5.515	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514	17.3-17.7 Radiolocation US259 G59 US402 G117	17.3-17.7 FIXED-SATELLITE (Earth-to-space) US271 BROADCASTING-SATELLITE US402 NG163 US259	Satellite Communications (25)
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) 5.517 (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.515	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 US334 G117	17.7-17.8 FIXED FIXED-SATELLITE (Earth-to-space) US271 US334	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
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18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B (Earth-to-space) 5.520 MOBILE 5.519 5.521			18.3-18.6 FIXED-SATELLITE (space-to-Earth) US334 G117	18.3-18.6 FIXED-SATELLITE (space-to-Earth) NG527A	Satellite Communications (25)
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International Table			United States Table		FCC Rule Part(s)
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18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 US334 G117 SPACE RESEARCH (passive) US139 US254	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 NG527A SPACE RESEARCH (passive) US139 US254 US334	Satellite Communications (25)
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.523A MOBILE			18.8-20.2 FIXED-SATELLITE (space-to-Earth) US334 G117	18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 NG527A US139 US334	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334 NG527A	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A Mobile-satellite (space-to-Earth) 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A Mobile-satellite (space-to-Earth) 5.524		19.7-20.2 FIXED-SATELLITE (space-to-Earth) NG527A MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 5.529 US334	Satellite Communications (25)
20.1-20.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528			US139		
20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) 5.524			20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) G117	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)			21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US532		Fixed Microwave (101)
21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530A 5.530B 5.530D	21.4-22 FIXED MOBILE 5.530A	21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530A 5.530B 5.530D 5.531	21.4-22 FIXED MOBILE		

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG527A Earth Stations in Motion (ESIMs), as regulated under 47 CFR part 25, are an application of the fixed-satellite service (FSS) and the following provisions shall apply:

(a) In the bands 10.7–11.7 GHz, 19.3–19.4 GHz, and 19.6–19.7 GHz (space-to-Earth), ESIMs may be authorized for the reception of FSS emissions from geostationary and non-geostationary satellites, subject to the conditions that these earth stations may not claim protection from transmissions of non-Federal stations in the fixed service and that non-geostationary-satellite systems not cause unacceptable interference to, or claim protection from, geostationary-satellite networks.

(b) In the bands 11.7–12.2 GHz (space-to-Earth), 14.0–14.5 GHz (Earth-to-space), 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space), ESIMs may be authorized to communicate with geostationary satellites on a primary basis.

(c) In the bands 11.7–12.2 GHz (space-to-Earth), 14.0–14.5 GHz (Earth-to-space), 18.3–18.6 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.4–28.6 GHz (Earth-to-space), and 29.5–30.0 GHz (Earth-to-space), ESIMs may be authorized to communicate with non-geostationary satellites, subject to the condition that non-geostationary-satellite systems may not cause unacceptable interference to, or claim protection from, geostationary-satellite networks.

(d) In the band 17.8–18.3 GHz (space-to-Earth), ESIMs may be authorized for the reception of FSS emissions from geostationary and non-geostationary satellites on a secondary basis, subject to the condition that non-geostationary-satellite systems not cause unacceptable interference to, or claim protection from, geostationary-satellite networks.

(e) In the bands 18.8–19.3 GHz and 28.6–29.1 GHz, ESIMs may be authorized to communicate with geostationary and non-geostationary satellites, subject to the condition that geostationary-satellite networks may not cause unacceptable interference to, or claim protection from, non-geostationary satellite systems in the fixed-satellite service.

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 4. Amend § 25.103 by revising the definitions of ''Earth Station on Vessel,'' ''Earth Stations Aboard Aircraft,'' ''Routine processing or licensing,'' and ''Vehicle-Mounted Earth Station'' to read as follows:

§ 25.103 Definitions.

* * * * *

Earth Station Aboard Aircraft (ESAA). An earth station operating aboard an aircraft that receives from and transmits to Fixed-Satellite Service space stations.

* * * * *

Earth Station on Vessel (ESV). An earth station onboard a craft designed for traveling on water, receiving from and transmitting to Fixed-Satellite Service space stations.

* * * * *

Routine processing or licensing. Expedited processing of unopposed applications for earth stations in the FSS communicating with GSO space stations that satisfy the criteria in § 25.211(d), § 25.212(c) through (f), or § 25.218, include all required information, are consistent with all Commission rules, and do not raise any policy issues. Some, but not all, routine earth station applications are eligible for an autogrant procedure under § 25.115(a)(3).

* * * * *

Vehicle-Mounted Earth Station (VMES). An earth station, operating from a motorized vehicle that travels primarily on land, that receives from and transmits to Fixed-Satellite Service space stations and operates within the United States.

■ 4. Amend § 25.115 by revising paragraphs (f), (g)(1)(vii), (l)(3)(i), (m)(3)(i), and (n)(3)(i), and adding paragraph (o) to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(f) *NGSO FSS earth stations in 10.7–30.0 GHz.* (1) An application for an NGSO FSS earth station license in the 10.7–30.0 GHz band must include the certification described in § 25.146(a)(2).

(2) Individual or blanket license applications may be filed for operation in the 10.7–12.7 GHz, 14–14.5 GHz, 17.8–18.6 GHz, 18.8–19.4 GHz, 19.6–20.2 GHz, 28.35–29.1 GHz, or 29.5–30.0 GHz bands; however, ESIMs cannot operate in the 28.35–28.4 GHz band and blanket licensing in the 10.7–11.7 GHz, 17.8–18.3 GHz, 19.3–19.4 GHz, and 19.6–19.7 GHz bands is on an unprotected basis with respect to current and future systems operating in the fixed service.

(3) Individual license applications only may be filed for operation in the 12.75–13.15 GHz, 13.2125–13.25 GHz, 13.75–14 GHz, or 27.5–28.35 GHz bands.

(g) * * *

(1) * * *

(vii) The relevant off-axis EIRP density envelopes in § 25.218 must be superimposed on plots submitted pursuant to paragraphs (g)(1)(i) through (vi) of this section.

* * * * *

(l) * * *

(3) * * *

(i) ESIM applicants that meet the relevant off-axis EIRP density mask must certify that an ESIM system is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. ESIM applicants that do not meet the relevant off-axis EIRP density mask must provide a detailed showing that an ESIM system is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. Variable-power ESIM applicants must certify that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving a command to do so from the system's network control and monitoring center, if the aggregate off axis EIRP densities of the transmitter or transmitters exceed the relevant off-axis EIRP density limits.

* * * * *

(m) * * *

(3) * * *

(i) ESIM applicants that meet the relevant off-axis EIRP density mask must certify that an ESIM system is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. ESIM applicants that do not meet the relevant off-axis EIRP density mask must provide a detailed showing that an ESIM system is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. Variable-power ESIM applicants must certify that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving a command to do so from the system's network control and monitoring center, if the aggregate off axis EIRP densities of the transmitter or transmitters exceed the relevant off-axis EIRP density limits.

* * * * *

(n) * * *

(3) * * *

(i) ESIM applicants that meet the relevant off-axis EIRP density mask must certify that an ESIM system is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP

density limits. ESIM applicants that do not meet the relevant off-axis EIRP density mask must provide a detailed showing that an ESIM system is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. Variable-power ESIM applicants must certify that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving a command to do so from the system's network control and monitoring center, if the aggregate off axis EIRP densities of the transmitter or transmitters exceed the relevant off-axis EIRP density limits.

* * * * *

(o) The requirements in this paragraph apply to applications for ESIMs operation with NGSO satellites in the Fixed-Satellite Service, in addition to the requirements in paragraphs (a)(1), (a)(5), and (i) of this section:

(1) An exhibit describing the geographic area(s) in which the ESIMs will operate and the location of hub and/or gateway stations.

(2) The point of contact information referred to in § 25.228(e)(2), (f), or (g)(1) as appropriate.

(3) Applicants for ESIMs that will exceed the guidelines in § 1.1310 of this chapter for radio frequency radiation exposure must provide, with their environmental assessment, a plan for mitigation of radiation exposure to the extent required to meet those guidelines.

* * * * *

■ 5. Amend § 25.202 by revising paragraph (a)(8), adding paragraphs (a)(10)(i) and (ii) and by removing and reserving paragraph (a)(11) as follows:

§ 25.202 Frequencies, frequency tolerance, and emission limits.

(a) * * *

(8) The following frequencies are available for use by Earth Stations on Vessels (ESVs) communicating with GSO FSS space stations, subject to the provisions in § 2.106 of this chapter:

3700–4200 MHz (space-to-Earth)
5925–6425 MHz (Earth-to-space)

* * * * *

(10) * * *

(i) The following frequencies are available for use by Earth Stations in Motion (ESIMs) communicating with GSO FSS space stations, subject to the provisions in § 2.106 of this chapter:

10.7–11.7 GHz (space-to-Earth)
11.7–12.2 GHz (space-to-Earth)
14.0–14.5 GHz (Earth-to-space)
17.8–18.3 GHz (space-to-Earth)
18.3–18.8 GHz (space-to-Earth)
18.8–19.3 GHz (space-to-Earth)
19.3–19.4 GHz (space-to-Earth)
19.6–19.7 GHz (space-to-Earth)
19.7–20.2 GHz (space-to-Earth)
28.35–28.6 GHz (Earth-to-space)
28.6–29.1 GHz (Earth-to-space)
29.25–30.0 GHz (Earth-to-space)

(ii) The following frequencies are available for use by Earth Stations in Motion (ESIMs) communicating with NGSO FSS space stations, subject to the provisions in § 2.106 of this chapter:

10.7–11.7 GHz (space-to-Earth)
11.7–12.2 GHz (space-to-Earth)
14.0–14.5 GHz (Earth-to-space)
17.8–18.3 GHz (space-to-Earth)
18.3–18.6 GHz (space-to-Earth)
18.8–19.3 GHz (space-to-Earth)
19.3–19.4 GHz (space-to-Earth)
19.6–19.7 GHz (space-to-Earth)
19.7–20.2 GHz (space-to-Earth)
28.4–28.6 GHz (Earth-to-space)
28.6–29.1 GHz (Earth-to-space)
29.5–30.0 GHz (Earth-to-space)

* * * * *

■ 6. Amend § 25.209 by revising paragraph (f) to read as follows:

§ 25.209 Earth station antenna performance standards.

* * * * *

(f) A GSO FSS earth station with an antenna that does not conform to the applicable standards in paragraphs (a) and (b) of this section will be authorized only if the applicant demonstrates that the antenna will not cause unacceptable interference. This demonstration must show that the transmissions of the earth station comport with the requirements in § 25.218 or the applicant must demonstrate that the operations of the earth station have been coordinated under § 25.220.

* * * * *

■ 7. Amend § 25.218 by revising paragraphs (a) and (j) to read as follows:

§ 25.218 Off-axis EIRP density envelopes for FSS earth stations transmitting in certain frequency bands.

(a) This section applies to applications for fixed and temporary-fixed FSS earth stations transmitting to geostationary space stations in the conventional C-band, extended C-band, conventional Ku-band, extended Ku-band, conventional Ka-band, or 24.75–25.25 GHz and applications for ESIMs transmitting in the conventional C-band, conventional Ku-band, or conventional Ka-band, except for applications proposing transmission of analog command signals at a band edge with bandwidths greater than 1 MHz or transmission of any other type of analog signal with bandwidths greater than 200 kHz.

* * * * *

(j) Applications for authority for fixed earth station operation in the conventional C-band, extended C-band, conventional Ku-band, extended Ku-band, conventional Ka-band, or 24.75–25.25 GHz that do not qualify for routine processing under relevant criteria in this section, § 25.211, or § 25.212 are subject to the requirements in § 25.220.

■ 8. Amend § 25.228 by revising paragraphs (a), (b), (c), (e)(1), and paragraph (j) introductory text to read as follows:

§ 25.228 Operating and coordination requirements for earth stations in motion (ESIMs).

(a) GSO FSS ESIM transmissions must comport with the applicable EIRP density limits in § 25.218, unless coordinated pursuant to the requirements in § 25.220.

(b) Each FSS ESIM must be self-monitoring and, should a condition occur that would cause the ESIMs to exceed its authorized off-axis EIRP density limits in the case of GSO FSS ESIMs or any emission limits included in the licensing conditions in the case of NGSO FSS ESIMs, the ESIM must automatically cease transmissions within 100 milliseconds, and not resume transmissions until the condition that caused the ESIM to exceed those limits is corrected.

(c) Each FSS ESIM must be monitored and controlled by a network control and monitoring center (NCMC) or equivalent facility. Each ESIM must comply with a ''disable transmission'' command from the NCMC within 100 milliseconds of receiving the command. In addition, the NCMC must monitor the operation of each ESIM in its network, and transmit a ''disable transmission'' command to any ESIM that operates in such a way as to exceed the authorized off-axis EIRP density limit for GSO FSS ESIMs or any emission limits included in the licensing conditions in the case of NGSO FSS ESIMs. The NCMC must not allow the ESIM(s) under its control to resume transmissions until the condition that caused the ESIM(s) to exceed the authorized EIRP density limits is corrected.

* * * * *

(e) * * *

(1) ESV operators must control all ESVs by a NCMC or equivalent facility located in the United States, except that an ESV on U.S.-registered vessels may operate under control of a NCMC location outside the United States

provided the ESV operator maintains a point of contact within the United States that will have the capability and authority to cause an ESV on a U.S.-registered vessel to cease transmitting if necessary.

* * * * *

(j) The following requirements govern all ESIMs transmitting to GSO or NGSO satellites in the Fixed-Satellite Service in the 14.0–14.5 GHz band.

* * * * *

[FR Doc. 2020–13783 Filed 7–23–20; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 85, No. 143
Friday, July 24, 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.

OFFICE OF SPECIAL COUNSEL

5 CFR Part 10201

RIN 3209–AA53

Supplemental Standards of Ethical Conduct for Employees of the U.S. Office of Special Counsel

AGENCY: U.S. Office of Special Counsel (OSC).

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Special Counsel, with the concurrence of the U.S. Office of Government Ethics (OGE), proposes a regulation for OSC employees that supplements the executive branch Standards of Ethical Conduct issued by OGE. The supplemental regulation requires OSC employees to seek prior approval before engaging in outside employment or activity.

DATES: Interested parties should submit comments to OSC at one of the addresses shown below on or before August 24, 2020 to be considered in the formulation of a final rule.

ADDRESSES: You may submit written comments to OSC on the proposed rule by any of the following methods:

- *Email: frliaison@osc.gov.* Include the Regulatory Identification Number (RIN) 3209–AA53 in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the portal for submitting comments.

Instructions: All submissions must include the agency's name ''OSC'' and the RIN 3209–AA53. All comments received may be posted without change to *www.osc.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Heidi R. Morrison, Alternate Designated Agency Ethics Official, U.S. Office of Special Counsel, by email at *frliaison@osc.gov* or by telephone at (202) 804–7000.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the OGE Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel. Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt agency specific supplemental regulations that are necessary to properly implement its ethics program. OSC, with OGE's concurrence, has determined that the following supplemental rule is necessary and appropriate for successful implementation of OSC's ethics program.

II. Analysis of the Proposed Regulations

Section 10201.101 General

Section 10201.101 explains that these regulations apply to OSC employees and supplement the OGE Standards.

Section 10201.102 Prior Approval for Outside Employment or Activity

OSC has determined that it is necessary for the purpose of administering its ethics program to require its employees to obtain approval before engaging in outside employment or activities. The approval requirement will help ensure that potential ethical problems are resolved before employees begin outside employment or activities that could involve a violation of applicable statutes and OGE Standards and to remind OSC attorneys to consult their applicable state bar rules of professional conduct.

Section 10201.102(a) requires an OSC employee to obtain written approval from the Designated Agency Ethics Official (DAEO) or the Alternate Designated Agency Ethics Official (ADAEO) before engaging in any outside employment or activity.

Section 10201.102(b) defines outside ''employment'' or ''activity'' for purposes of this regulation to cover any form of non-Federal employment or business relationship involving the provision of services, whether for compensation or not for compensation. It includes, but is not limited to, serving as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, or teacher. The definition does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization unless such activities involve the provision of professional services or advice, or are for compensation other than reimbursement of expenses. The definition of ''employment'' and ''activity'' does not cover outside speaking or writing activities done on either an uncompensated or compensated basis.

A note following paragraph (b) of § 10201.102 highlights that employees who wish to engage in speaking or writing in a personal capacity are subject to a number of Federal ethics laws, and although not required to seek prior approval before engaging in those activities under the proposed rule, are encouraged to seek guidance from an agency ethics official. The note also reminds OSC attorneys that they are responsible for ensuring their outside conduct comports with the rules of professional conduct imposed by their state bar association.

Section 10201.102(c) provides that OSC's DAEO or ADAEO will grant approval when the outside employment or activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

Section 10201.102(d) provides that OSC's DAEO or ADAEO may issue instructions governing the submission of requests for approval of outside employment or activity, which may exempt categories of employment or activity from the prior approval requirement of this section based on a determination that employment or activity within those categories would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

III. Matters of Regulatory Procedure

Administrative Procedure Act (APA)

This action is taken under the Special Counsel's authority at 5 U.S.C. 1212(e) to publish regulations in the **Federal Register**.

Executive Order 12866 and Executive Order 13771

This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule is not subject to the requirements of Executive Order 13771 because this rule results in no more than de minimis costs.

Regulatory Flexibility Act (RFA)

As required by the RFA, OSC certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act (NEPA)

This rule will have no physical impact upon the environment and therefore will not require any further review under the NEPA.

Congressional Review Act (CRA)

This rule relates to agency personnel and does not substantially affect the rights or obligations of non-agency parties. Therefore, it does not meet the definition of a ''rule'' at 5 U.S.C. 804 and is not subject to the procedures of the CRA.

Paperwork Reduction Act (PRA)

OSC has determined that the PRA does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 10201

Conflict of interests, Government employees.

Approved: June 25, 2020.

Travis G. Millsaps,

Deputy Special Counsel for Public Policy, U.S. Office of Special Counsel.

Emory Rounds,

Director, U.S. Office of Government Ethics.

■ For the reasons set forth in the preamble, the U.S. Office of Special Counsel, with the concurrence of the U.S. Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter CII, consisting of part 10201, to read as follows:

TITLE 5—ADMINISTRATIVE PERSONNEL

CHAPTER CII—U.S. OFFICE OF SPECIAL COUNSEL

PART 10201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE U.S. OFFICE OF SPECIAL COUNSEL

Sec.
10201.101 General.
10201.102 Prior approval for outside employment or activity.

Authority: 5 U.S.C. 1212(e); 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); Exec. Order No. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by Exec. Order No. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 10201.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the U.S. Office of Special Counsel (OSC) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635.

(b) *Other regulations, guidance, and procedures.* In addition to the standards in 5 CFR part 2635 and this part, all OSC employees are required to comply with implementing guidance and procedures issued by OSC in accordance with 5 CFR 2635.105(c). OSC employees are also subject to all other government-wide regulations concerning executive branch ethics including without limitation, financial disclosure regulations contained in 5 CFR part 2634, regulations concerning financial interests contained in 5 CFR part 2640, post-employment conflict of interest restrictions contained in 5 CFR part 2641, outside earned income limitations and employment and affiliation restrictions applicable to certain noncareer employees contained in 5 CFR part 2636, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735.

§ 10201.102 Prior approval for outside employment or activity.

(a) *General requirement.* Before engaging in any outside employment or activity, whether or not for compensation, an OSC employee must obtain written approval from the Designated Agency Ethics Official (DAEO) or the Alternate Designated Agency Ethics Official (ADAEO), except to the extent that OSC has issued an internal instruction pursuant to paragraph (d) of this section exempting certain employment or activities from this requirement.

Note 1 to paragraph (a). 18 U.S.C. 203(d) and 205(e) require special approval for certain representational activities in claims against the Federal Government and other matters affecting the interests of the Government.

(b) *Definition of ''outside employment or activity''.* For purposes of this section, ''outside employment or activity'' means any form of non-Federal employment or business relationship involving the provision of services by the employee, whether for compensation or not for compensation. It includes, but is not limited to, serving as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, or teacher. The definition does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization unless such activities involve the provision of professional services or advice, or are for compensation other than reimbursement of expenses.

Note 2 to paragraph (b). Employees who wish to engage in compensated speaking or writing in a personal capacity are subject to, among other things, the provisions of 5 CFR 2635.703 (concerning use of nonpublic information) and 5 CFR 2635.807 (concerning receipt of compensation for teaching, speaking, and writing related to one's duties), and are encouraged to seek guidance from an agency ethics official before engaging in such activities. Certain covered non-career employees are also subject to further restrictions on receipt of outside compensation pursuant to section 502 of the Ethics in Government Act (5 U.S.C. app.). In addition, OSC attorneys should consult their applicable state bar rules of professional conduct.

(c) *Standard for approval.* Approval shall be granted by the DAEO or ADAEO upon a determination that the outside employment or activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Implementation guidance.* The DAEO or ADAEO may issue internal instructions governing the submission of requests for approval of outside employment or activity. The instructions may exempt categories of employment or activities from the prior approval requirement of this section based on a determination that those categories generally would be approved and are not likely to involve prohibited conduct or create an appearance of lack of impartiality.

[FR Doc. 2020–14932 Filed 7–23–20; 8:45 am]

BILLING CODE 7405–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 66

[Document No. AMS–FTPP–20–0057]

National Bioengineered Food Disclosure Standard; Updates to the List of Bioengineered Foods

ACTION: Request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments and feedback on recommendations to update the List of Bioengineered Foods (List) as it pertains to the National Bioengineered Food Disclosure Standard (Standard).

DATES: Comments are due by August 24, 2020.

ADDRESSES: We invite you to submit written comments via the internet at *http://www.regulations.gov.* All comments should refer to the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice, including the identity of individuals or entities submitting comments, will be made available to the public on the internet via *http://www.regulations.gov.*

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. Under 7 CFR 66.1, a bioengineered food is a food that, subject to certain factors, conditions, and limitations, contains genetic material that has been modified through *in vitro* recombinant deoxyribonucleic acid (rDNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature.

The regulations, at 7 CFR 66.6, include the AMS List of Bioengineered Foods (the List), which currently includes: Alfalfa, apple (Arctic™ varieties), canola, corn, cotton, eggplant (BARI Bt Begun varieties), papaya (ringspot virus-resistant varieties), pineapple (pink flesh varieties), potato, salmon (AquAdvantage®), soybean, squash (summer), and sugarbeet. As stated in the preamble to the final rule, at 83 FR 65852, the List ''establishes a presumption about what foods might require disclosure under the NBFDS, but does not absolve regulated entities from the requirement to disclose the bioengineered status of food and food ingredients produced with foods not on the List when the regulated entities have actual knowledge that such foods or food ingredients are bioengineered.'' As a result, if a regulated entity is using a food or ingredient produced from an item on the List, they must make a bioengineered food disclosure unless they have records demonstrating that the food or ingredient they are using is not bioengineered. Similarly, even if a food is not the List, a regulated entity must make a bioengineered food disclosure if they have actual knowledge a food or ingredient they are using is a bioengineered food or a bioengineered food ingredient.

As stated in 7 CFR 66.7(a), AMS will review and consider updates to the List on an annual basis and will solicit recommendations regarding updates to the List through notification in the **Federal Register** and on the AMS website. The regulations further provide that:

(1) Recommendations regarding additions to and subtractions from the List may be submitted to AMS at any time or as part of the annual review process.

(2) Recommendations should be accompanied by data and other information to support the recommended action.

(3) AMS will post public recommendations on its website, along with information about other revisions to the List that the agency may be considering, including input based on consultation with the government agencies responsible for oversight of the products of biotechnology: USDA's Animal and Plant Health Inspection Service (USDA–APHIS), the U.S. Environmental Protection Agency (EPA), and the Department of Health and Human Services' Food and Drug Administration (FDA), and appropriate members of the Coordinated Framework for the Regulation of Biotechnology or a similar successor.

(4) AMS will consider whether foods proposed for inclusion on the List have been authorized for commercial production somewhere in the world, and whether the food is currently in legal commercial production for human food somewhere in the world.

(5) If AMS determines that an update to the List is appropriate following its review of all relevant information provided, AMS will modify the List.

In addition to seeking public recommendations generally regarding the entries on the List, AMS is specifically seeking public comment on the recommendations listed below.

Additions to the List

As required by 7 CFR 66.7(a)(4), AMS will consider two criteria when identifying food to add to the List: (1) Whether the food proposed for inclusion on the List has been authorized for commercial production somewhere in the world, and (2) whether that food is currently in legal commercial production for human food somewhere in the world.

For the first criterion, AMS considers a food to have been authorized for commercial production when it has cleared all the legal requirements necessary to be produced in that country. If multiple authorizations are required before a food can be commercially produced, AMS would not consider that food to have been authorized for commercial production until it has completed all such authorizations. For the second criterion, AMS will look to see if the food that has been authorized for commercial production actually is in legal commercial production for use as human food.

Based on publicly available information, AMS currently believes there is at least one crop that meets the dual criteria required by 7 CFR 66.7(a)(4). AMS believes that sugarcane is (1) Authorized for commercial production somewhere in the world and (2) currently in legal commercial production for human food somewhere in the world.

1. *Sugarcane:* AMS believes that Brazil approved bioengineered sugarcane for commercial release and that bioengineered sugar cane is currently in legal commercial production.[1] The sugarcane was developed using recombinant DNA technology to be insect-resistant to help control sugarcane borer infestations. Brazil approved the bioengineered sugarcane for commercial production in

[1] Agricultural Biotechnology Annual—2018, [Brazil—Agricultural Biotechnology Report] *https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Agricultural%20Biotechnology%20Annual_Brasilia_Brazil_12-26-2018.*

2018 and planted approximately 4,000 hectares for commercial production in the 2018/2019 crop year.[2] As a result, AMS believes that sugarcane should be added to the List. Consistent with other items on the List, AMS would initially propose that sugarcane include ''(insect-resistant [3])'' because there is currently only one bioengineered trait used in sugarcane production. As stated in the preamble to the final rule,[4] if other BE versions of listed foods are authorized and become legally available, AMS would revise the listing during the annual update process to be more generic. Therefore, AMS seeks comment on whether it should undertake rulemaking to add ''Sugarcane (insect-resistant)'' to the List.

Amendments to the List

1. *Squash (summer):* Squash (summer) is currently included on the List but AMS proposes to add an additional modifier to reflect that the only trait for bioengineered summer squash that is currently available is virus-resistance.[5] Therefore, AMS would add ''virus-resistant'' to the existing modifier ''summer,'' so that squash on the list would read ''Squash (summer, virus-resistant).'' This change would be consistent with the treatment of other items on the list, where modifiers are included when only one bioengineered trait is available, as is the case with eggplant, papaya, and pineapple. Therefore, AMS seeks comment on whether it should add ''virus-resistant'' as a modifier to the existing entry of ''Squash (summer).''

Other Foods Considered for Addition to the List

In its research, AMS identified several bioengineered foods that are at various stages of authorization or have been authorized for commercial production but are not yet in legal commercial production for human food. Although AMS believes these bioengineered foods do not yet meet the criteria in 7 CFR 66.7(a)(4) to be added to the List, AMS is seeking public comment to determine if additional information is publicly available.

1. Cowpea: Nigeria recently authorized the commercial release of pod-borer resistant cowpea (Event—AAT709A), bioengineered for lepidopteran insect pest (*Maruca vitrata)* resistance.[6] AMS seeks comment on whether cowpea is in legal commercial production for human food, or would be in legal commercial production for human food when AMS initiates the rulemaking process.[7] If cowpea is added to the List, AMS also seeks comment on whether the addition should include any modifiers that would more accurately describe the type of cowpea that is bioengineered, such as pod-borer resistant cowpea or insect resistant cowpea.

2. Rice: AMS is aware that the Philippine Department of Agriculture approved the safety of bioengineered rice (Event—GR2E, Production of provitamin A carotenoids), also known as golden rice, for use as human food.[8] While this approval has to do with the safety of the rice as human food, the rice is not yet authorized for commercial production. Because this rice has not yet been authorized for commercial release and is not in legal commercial production, it does not meet the criteria identified in 7 CFR 66.7(a)(4) and AMS is not recommending it be added to the List. AMS seeks comment on its understanding of the current status of this rice.

After completing its research, AMS has not identified any other foods that it believes would meet the criteria to be included on the List. AMS requests public comment on any other foods not mentioned above that it should consider for addition to the List.

Any comments not directly related to the addition, deletion or modification of the potential items for the List will not be considered nor will recommendations that are not accompanied by data and other information to support the recommended action. After reviewing the comments on this notice, AMS will determine whether it should initiate rulemaking to update the List. Any changes to the regulations would be reflected in an amendment to the regulations found at 7 CFR part 66. As stated at 7 CFR 66.7(b), regulated entities would have 18 months following the effective date of the updated List of Bioengineered Foods to revise food labels to reflect changes to the List in accordance with the disclosure requirements of 7 CFR part 66.

Authority: 7 U.S.C. 1621 *et seq.*

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–14933 Filed 7–23–20; 8:45 am]

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[2] Agricultural Biotechnology Annual—2019, [Brazil—Agricultural Biotechnology Report] *https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Agricultural%20Biotechnology%20Annual_Brasilia_Brazil_10-20-2019.*

[3] Consultations on Food from New Plant Varieties, *https://www.accessdata.fda.gov/scripts/fdcc/?set=Biocon&id=CTC175-A.*

[4] 83 FR 65819.

[5] Consultations on Food from New Plant Varieties, *https://www.accessdata.fda.gov/scripts/fdcc/index.cfm?set=Biocon&id=SEM%2D0CZW3%2D2,* Consultations on Food from New Plant Varieties, *https://www.accessdata.fda.gov/scripts/fdcc/index.cfm?set=Biocon&id=SEM%2D0ZW20%2D7.*

[6] Agricultural Biotechnology Annual—2019, Nigeria Approves the Commercial Release of Bt. Pod-Borer Resistant Cowpea *https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Agricultural%20Biotechnology%20Annual_Lagos_Nigeria_5-21-2019*

[7] Pod-borer Resistant Cowpea Project, *https://www.aatf-africa.org/wp-content/uploads/2019/06/Cowpea-Project.pdf,* Event Name AAT709A, *https://www.isaaa.org/gmapprovaldatabase/event/default.asp?EventID=543&Event=AAT709A.*

[8] Philippines approves Golden Rice for direct use as food and feed, or for processing, *https://www.irri.org/news-and-events/news/philippines-approves-golden-rice-direct-use-food-and-feed-or-processing.*

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC–20–0036; SC20–930–3 PR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Changes to Subcommittee Size and Addition of Term Limits

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a recommendation from the Cherry Industry Administrative Board (Board) to change subcommittee size and add term limits under the marketing order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin.

DATES: Comments must be received by August 24, 2020.

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

submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

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

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

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

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

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

This proposed rule invites comments on changing subcommittee size and adding term limits to subcommittee appointments under the Order. This action would modify the composition of the subcommittee which reviews exemption requests by increasing the subcommittee from three members and an alternate to a maximum of five members with no alternate. This proposed rule would also add a five-year term limit to these appointments. This would provide more opportunities for participation and additional flexibility in staffing the subcommittee. The Board unanimously recommended this change at its March 19, 2020, meeting.

Section 930.31 of the Order authorizes the Board to have committees and subcommittees as may be necessary. Section 930.59 authorizes handler diversion of tart cherries from the reserve for specific uses including, but not limited to, new product and new market development. Section 930.62 authorizes the Board, with approval of the Secretary, to exempt cherries from the assessment, volume regulation, and reserve provisions of the Order for specified uses. Both sections authorize the Board, with the approval of the Secretary, to establish requirements necessary and incidental to the administration of the Order.

Section 930.159 of the Order's administrative requirements specifies methods of handler diversion, including using cherries or cherry products for exempt purposes prescribed under § 930.162. Section 930.162, in part, establishes a Board appointed subcommittee, as authorized under § 930.31 stated above, to assist the Board staff in reviewing the applications for exemptions. The proposed changes would impact this subcommittee.

In seasons with volume regulation, handlers can sell cherries for exempt uses, including new products and new markets, and receive diversion credit rather than keeping that tonnage in reserve. The Board established the review subcommittee to review and grant exemption requests that have the potential to expand new markets. The subcommittee works with Board staff to carry out these tasks. Currently, this subcommittee consists of three members and one alternate, each having no handler affiliation but knowledge of the tart cherry industry. Section 930.162 further specifies that one of the members or the alternate should be the Board's public member or the Board's public member alternate, if either are available to serve. This proposed rule would increase the size of the subcommittee and include term limits for all subcommittee appointments. The current requirement regarding the service of the Board's public member or their alternate would continue to remain in effect.

The Board formed a New Product New Market Committee (Committee) to examine the current regulations regarding the subcommittee responsible for reviewing applications for exemption or the renewal of exemption. The formation and tasking of this Committee was largely the result of growing Board member perceptions that the exemption process was not fully understood or utilized by industry. The Committee reviewed the process for selecting subcommittee members, assessed subcommittee operations, and identified improvement opportunities.

During Board meetings in January and March 2020, the Committee outlined some of the challenges associated with the subcommittee, including subcommittee participation. The Committee stated the current requirements, which stipulate the subcommittee shall consist of three members and one alternate, were limiting. The Committee did not recommend any changes to existing qualification requirements to serve on the subcommittee. Any subcommittee meeting and quorum requirements would be addressed in the Board's bylaws.

The Committee recommended expanding the size of the subcommittee to five members without mandating a set number of members required to conduct business. The Committee noted this adjustment would provide some flexibility in staffing the subcommittee

while allowing the subcommittee to fulfill its responsibility to review and grant exemptions.

The Committee also recommended the inclusion of five-year term limits for all subcommittee appointments as this would help balance preserving subcommittee institutional knowledge with the need to include new participants and perspectives in the exemption review process. One Committee member also noted a fixed term may encourage more qualified people to pursue subcommittee participation because they would know their commitment to the Board would not be open-ended. The Committee also believed establishing a regular schedule of appointments through term limits should lead to increased awareness of when participation opportunities would be coming available.

In discussing the Committee's suggested changes, the Board was supportive of the recommendations to increase the number of seats on the subcommittee and to establish term limits for subcommittee participants. In reviewing the increase in the size of the subcommittee, the Board did not recommend a specific quorum requirement for the subcommittee to meet. However, the Board believes the additional subcommittee members would provide more candidates to draw from when scheduling subcommittee meetings and would help ensure some members were in attendance for each scheduled subcommittee meeting. The Board also agreed increasing the number of seats on the subcommittee would provide the opportunity for more participation. The Board concluded no changes should be made to the existing requirement that the public member or alternate public member, when available, serve on the subcommittee, but did decide removing the requirement for an alternate subcommittee member would simplify the structure of the subcommittee.

The Board was also supportive of establishing term limits for subcommittee members. Members agreed having term limits would increase opportunities for others to serve on the subcommittee, and qualified candidates may be more willing to participate if there is a fixed term.

Accordingly, the Board unanimously voted to increase the size of the subcommittee to a maximum of five total members with a five-year term limit for all appointments to the subcommittee. The Board believes the proposed changes would not only improve operational flexibility and administration of the subcommittee but could encourage greater industry and small business participation on the subcommittee and in new product and new market projects.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act 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 production area and 40 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service and Board data, the average annual price for tart cherries during the 2018–19 season was approximately $0.196 per pound. With total utilization at 288.8 million pounds for the 2018–2019 season, the total 2018–2019 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 2018–2019 season. Based on utilization, this price represents a good estimate of the price for processed cherries. Multiplying the 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 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.

This proposed rule would increase the size of the subcommittee and add term limits to subcommittee appointments under § 930.162. This proposed action would modify the composition of the subcommittee which reviews exemption requests from three members and an alternate to a maximum of five members with no alternate. This proposed rule would also add a five-year term limit to these appointments. This would provide more opportunities for participation and additional flexibility in staffing the subcommittee. The authority for these proposed actions is provided in §§ 930.31, 930.59 and 930.62. These proposed changes were unanimously recommended by the Board at its meeting on March 19, 2020.

It is not anticipated that this action would impose any additional costs on growers or handlers. This proposed change is administrative in nature, would not increase reporting requirements, and would provide the Board with improved flexibility in staffing the subcommittee.

This proposed action would have a beneficial impact as it would encourage greater industry and small business participation in applying for diversion credit for new product and new market projects under § 930.162, and expanding the market for tart cherries. The subcommittee performs the function of reviewing and granting exemption requests that have the potential to expand these markets. Increasing the maximum size of the subcommittee without mandating that all seats be filled allows for more flexibility in conducting subcommittee business. The Board also believes the additional members would provide more candidates to draw from when scheduling subcommittee meetings and would help ensure some members were in attendance for each scheduled meeting. Adding a five-year term limit to subcommittee membership helps maintain subcommittee institutional knowledge while ensuring the inclusion of the perspective and insight from new participants.

This proposed rule is expected to benefit the industry. The effects of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities.

The Board considered one alternative to this proposal. The Board considered making no changes either to the structure of the subcommittee or the lack of term limits for serving thereon. However, when discussing the alternative, Board members assessed that increasing the subcommittee size

and the inclusion of term limits would not only increase the likelihood of subcommittee participation, but also promote increased industry confidence and trust in the subcommittee's composition and function. Therefore, the alternative was 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 in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed 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 meeting was 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 March 19, 2020, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

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.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart Cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

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

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

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 930.162 by revising paragraph (d) to read as follows:

§ 930.162 Exemptions.

* * * * *

(d) *Review of applications.* A Board appointed subcommittee shall review applications for exemption or renewal of exemption and either approve or deny the exemption. The subcommittee shall consist of up to five total members, each having no handler affiliation but knowledge of the tart cherry industry, one of whom shall be the public member or the alternate public member if available to serve. Each subcommittee appointment shall be limited to a five-year term. Any denial of an application for exemption or renewal of an existing exemption shall be served on the applicant by certified mail and shall state the reasons for the denial. Within 10 days after the receipt of a denial, the applicant may file an appeal, in writing, with the Deputy Administrator, Specialty Crops Program, supported by any arguments and evidence the applicant may wish to offer as to why the application for exemption or renewal of exemption should have been approved. The Deputy Administrator, upon consideration of such appeal, will take such action as deemed appropriate with respect to the application for exemption or renewal of exemption.

* * * * *

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–15201 Filed 7–23–20; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–STD–0044]

RIN 1904–AE41

Energy Conservation Program: Energy Conservation Standards for Certain Commercial and Industrial Equipment; Early Assessment Review; Commercial Clothes Washers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is undertaking an early assessment review for amended energy conservation standards for commercial clothes washers to determine whether to amend applicable energy conservation standards for this equipment. Specifically, through this request for information (''RFI''), DOE seeks data and information that could enable the agency to determine whether DOE should propose a ''no-new-standard'' determination because a more-stringent standard: Would not result in a significant savings of energy; is not technologically feasible; is not economically justified; or any combination of the foregoing. DOE welcomes written comments from the public on any subject within the scope of this document (including those topics not specifically raised in this RFI), as well as the submission of data and other relevant information concerning this early assessment review.

DATES: Written comments and information are requested and will be accepted on or before September 22, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–STD–0044, by any of the following methods:

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

2. *Email:* to *CommClothesWashers2019STD0044@ee.doe.gov.* Include docket number EERE–2019–BT–STD–0044 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW,

Washington, DC, 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW, Suite 600, Washington, DC, 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2019-BT-STD-0044.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

DOE has established an early assessment review process to conduct a more focused analysis of a specific set of facts or circumstances that would allow DOE to determine that, based on one or more statutory criteria, a new or amended energy conservation standard is not warranted. One of the major factors that led to the establishment of this review is to limit the resources, from both DOE and stakeholders, allocated to rulemakings that will not satisfy the requirements in Energy Policy and Conservation Act, as amended (''EPCA'') [1] that a new or amended energy conservation standard save a significant amount of energy, and be economically justified and technologically feasible. *See* 85 FR 8626, 8653–8654 (Feb. 14, 2020).

As part of the early assessment, DOE publishes a RFI in the **Federal Register**, announcing that DOE is considering initiating a rulemaking proceeding and soliciting comments, data, and information on whether a new or amended energy conservation standard would save a significant amount of energy and be technologically feasible and economically justified. Based on the information received in response to the RFI and DOE's own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard.

If DOE makes an initial determination based upon available evidence that a new or amended energy conservation standard would not meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking before issuing a final determination that new or amended energy conservation standards are not warranted. Conversely, if DOE makes an initial determination that a new or amended energy conservation standard would satisfy the applicable statutory criteria or DOE's analysis is inconclusive, DOE would undertake the preliminary stages of a rulemaking to issue a new or amended energy conservation standard. Beginning such a rulemaking, however, would not preclude DOE from later making a determination that a new or amended energy conservation standard cannot satisfy the requirements in the EPCA, based upon the full suite of DOE's analyses. *See* 85 FR 8626, 8654 (Feb. 14, 2020).

A. Authority

EPCA, among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [2] of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes commercial clothes washers (''CCW''), the subject of this document. (42 U.S.C. 6311(1)(H)).

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6316(a) (applying the preemption waiver provisions of 42 U.S.C. 6297).

EPCA also requires that, not later than six years after the issuance of any final rule establishing or amending a standard, DOE evaluate the energy conservation standards for each type of covered equipment, including those at issue here, and publish either a notice of determination that the standards do not need to be amended, or a notice of proposed rulemaking (''NOPR'') that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)) In making a determination that the

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

standards do not need to be amended, DOE must evaluate whether amended standards (1) will result in significant conservation of energy, (2) are technologically feasible, and (3) are cost effective as described under 42 U.S.C. 6295(o)(2)(B)(i)(II). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A); 42 U.S.C. 6295(n)(2)) Under 42 U.S.C. 6295(o)(2)(B)(i)(II), DOE must determine whether the benefits of a standard exceed its burdens by, to the greatest extent practicable, considering the savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered equipment which are likely to result from the imposition of the standard. If DOE determines not to amend a standard based on the statutory criteria, not later than three years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the equipment do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(2))

In proposing new standards, DOE must evaluate that proposal against the criteria of 42 U.S.C. 6295(o), as described in the following section, and follow the rulemaking procedures set out in 42 U.S.C. 6295(p). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(B)) If DOE decides to amend the standard based on the statutory criteria, DOE must publish a final rule not later than two years after energy conservation standards are proposed. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(3)(A))

B. Rulemaking History

DOE completed a rulemaking in 2014 to amend the standards for CCWs manufactured on or after January 1, 2018. 79 FR 74492 (Dec. 15, 2014; ''December 2014 Final Rule''). The current energy conservation standards established in this final rule are located in title 10 of the Code of Federal Regulations (''CFR'') part 431 section 156(b). As provided in 10 CFR 431.154, the currently applicable DOE test procedures for CCWs appear at appendix J2 to subpart B of part 430, which prescribes the test procedures for residential clothes washers.[3]

II. Request for Information

DOE is publishing this RFI to collect data and information during the early assessment review to inform its decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an energy conservation standards rulemaking. Accordingly, in the following sections, DOE has identified specific issues on which it seeks input to aid in its analysis of whether an amended standard for CCWs would not save a significant amount of energy or be technologically feasible or economically justified. In particular, DOE is interested in any information indicating that there has not been sufficient technological or market changes since DOE last conducted an energy conservation standards rulemaking analysis for CCWs to suggest a more-stringent standard could satisfy these criteria. DOE also welcomes comments on other issues relevant to its early assessment that may not specifically be identified in this document.

A. Significant Savings of Energy

On December 15, 2014, DOE established energy conservation standards for CCWs that are expected to result in 0.04 quadrillion British thermal units (''quads'') of site energy savings[4] over a 30-year period, which amounts to energy savings of 7 percent relative to the energy use of CCWs without the amended standards. 79 FR 74492, 74493. If DOE determines that more-stringent energy conservation standards would not result in an additional 0.3 quads of site energy savings or an additional 10-percent reduction in site energy use over a 30-year period, DOE would propose to make a no-new-standards determination. DOE seeks comment on energy savings that could be expected from more-stringent standards for CCWs.

[3] EPCA directs that the test procedure for CCWs shall be the same as the test procedures established for residential clothes washers. (42 U.S.C. 6314(a)(8))

[4] This estimate of 0.04 quads reflects site energy savings. The final rule published December 15, 2014 presented the 30-year energy savings estimate as 0.07 quads, reflecting full-fuel-cycle (''FFC'') energy savings. The FFC measure includes point-of-use (site) energy; the energy losses associated with generation, transmission, and distribution of electricity; and the energy consumed in extracting, processing, and transporting or distributing primary fuels. 79 FR 77492, 74502.

B. Technological Feasibility

In the December 2014 Final Rule, DOE considered a number of technology options that manufacturers could use to reduce energy consumption in CCWs. DOE seeks comment on any changes to these technology options that could affect whether DOE could propose a ''no-new-standards'' determination, such as an insignificant increase in the range of efficiencies and performance characteristics of these technology options. DOE also seeks comment on whether there are any other technology options that DOE should consider in its analysis.

C. Economic Justification

In determining whether a proposed energy conservation standard is economically justified, DOE analyzes, among other things, the potential economic impact on consumers, manufacturers, and the Nation. DOE seeks comment on whether there are economic barriers to the adoption of more-stringent energy conservation standards for CCWs. DOE also seeks comment and data on any other aspects of its economic justification analysis from the December 2014 Final Rule that may indicate whether more-stringent energy conservation standards would not be economically justified or cost effective.

III. Submission of Comments

DOE invites all interested parties to submit in writing by September 22, 2020, comments and information on matters addressed in this notice and on other matters relevant to DOE's early assessment of whether more-stringent energy conservation standards are not warranted for CCWs.

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 Building Technologies staff 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. If this instruction is followed, 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, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, 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 in 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. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. Faxes will not be accepted.

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. Pursuant 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, postal mail, or hand delivery/courier 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 to *CommClothesWashers2019STD0044@ee.doe.gov* or on a CD, if feasible. 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).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on July 8, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, 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 8, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–15080 Filed 7–23–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0729; Project Identifier AD–2020–00620–E]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain CFM International, S.A. (CFM) LEAP–1A23, LEAP–1A24, LEAP–1A24E1, LEAP–1A26, LEAP–1A26CJ, LEAP–1A26E1, LEAP–1A29, LEAP–1A29CJ, LEAP–1A30, LEAP–1A32, LEAP–1A33, LEAP–1A33B2, LEAP–1A35A model turbofan engines. This proposed AD was prompted by an investigation by CFM that showed a subsurface anomaly in a part manufactured using the same material as the LEAP–1A high-pressure turbine (HPT) stage 2 disk. This proposed AD would require an ultrasonic inspection (UI) of the HPT stage 2 disk and replacement of any HPT stage 2 disk that fails the UI with a part eligible for installation. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 8, 2020.

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

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

For service information identified in this NPRM, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125, United States; phone: (877) 432–3272; email: *fleetsupport@ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0729; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7120; fax: (781) 238–7199; email: *Chris.McGuire@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0729; Project Identifier AD–2020–00620–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

Except for Confidential Business Information 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 proposal.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Christopher McGuire, 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.

Background

The FAA learned that during a broad investigation by CFM into melt-related material anomalies, a subsurface anomaly was found in a part manufactured from the same material used to manufacture the LEAP–1A HPT stage 2 disk. This condition, if not addressed, could result in failure of the HPT stage 2 disk, uncontained release of the HPT stage 2 disk, damage to the engine, and damage to the airplane.

FAA's Determination

The FAA is issuing this NPRM because the agency has determined that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Service Information Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed CFM Service Bulletin (SB) LEAP–1A–72–00–0405–01A–930A–D, Issue 001, dated March 5, 2020. The SB describes procedures for performing an ultrasonic inspection of the HPT stage 2 disk. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements

This proposed AD would require a UI of the HPT stage 2 disk and replacement of any HPT stage 2 disk that fails the inspection with a part eligible for installation.

Costs of Compliance

The FAA estimates that this AD, as proposed, would affect 148 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
UI of HPT stage 2 disk	8 work-hours × $85 per hour = $680	$0	$680	$100,640

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace HPT stage 2 disk	0.25 work-hours × $85.00 per hour = $21.25	$286,000	$286,021.25

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

CFM International, S.A.: Docket No. FAA–2020–0729; Project Identifier AD–2020–00620–E.

(a) Comments Due Date

The FAA must receive comments by September 8, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. (CFM) LEAP–1A23, LEAP–1A24, LEAP–1A24E1, LEAP–1A26, LEAP–1A26CJ, LEAP–1A26E1, LEAP–1A29, LEAP–1A29CJ, LEAP–1A30, LEAP–1A32, LEAP–1A33, LEAP–1A33B2, LEAP–1A35A model turbofan engines with a high-pressure turbine (HPT) stage 2 disk, part number (P/N) 2466M52G03 or P/N 2788M26G01 installed, and with a serial number listed in Table 1 of CFM Service Bulletin (SB) LEAP–1A–72–00–0405–01A–930A–D, Issue 001, dated March 5, 2020.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an investigation by CFM that discovered a subsurface anomaly in a part manufactured from the same material as used to manufacture the LEAP–1A HPT stage 2 disk. The FAA is issuing this AD to prevent failure of the LEAP–1A HPT stage 2 disk. The unsafe condition, if not addressed, could result in uncontained release of the HPT stage 2 disk, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) At next piece part exposure after the effective date of this AD, perform an ultrasonic inspection of the HPT stage 2 disk in accordance with the Accomplishment Instructions, paragraph 5.A.(1), of CFM SB LEAP–1A–72–00–0405–01A–930A–D, Issue 001, dated March 5, 2020.

(2) Replace any disk that fails the inspection required by paragraph (g)(1) of this AD with a part eligible for installation.

(h) Definition

For the purpose of this AD, a part eligible for installation is a HPT stage 2 disk not affected by this AD, or an HPT stage 2 disk that has been inspected in accordance with the Accomplishment Instructions, paragraph 5.A.(1), of CFM SB LEAP–1A–72–00–0405–01A–930A–D, Issue 001, dated March 5, 2020, and is not rejected by the inspection limits as specified in the service information.

(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 Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7120; fax: (781) 238–7199; email: *Chris.McGuire@faa.gov.*

(2) For service information identified in this AD, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125, United States; phone: (877) 432–3272; email: *fleetsupport@ge.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued on July 21, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–16042 Filed 7–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0654; Airspace Docket No. 20–ASO–17]

RIN 2120–AA66

Proposed Amendment of V–53, V–115, V–140, V–339, T–215, and T–323, and Revocation of V–339 in the Vicinity of Hazard, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend three VHF Omnidirectional Range (VOR) Federal airways, V–53, V–115, and V–140; amend two Area Navigation (RNAV) T-routes, T–215 and T–323; and remove one VOR Federal airway, V–339, in the vicinity of Hazard, KY. The Air Traffic Service (ATS) route modifications are necessary due to the planned decommissioning of the VOR portion of the Hazard, KY, VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID) which provides navigation guidance for portions of the affected ATS routes. The Hazard VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before September 8, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0654; Airspace Docket No. 20–ASO–17 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0654; Airspace Docket No. 20–ASO–17) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0654; Airspace Docket No. 20–ASO–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Hazard, KY, VOR/DME in February, 2021. The Hazard VOR is a candidate VOR identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Hazard, KY, VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support Next Generation Air Transportation System (NextGen) PBN flight procedure requirements.

The ATS route dependencies to the Hazard VOR/DME are VOR Federal airways V–53, V–115, V–140, and V–339. With the planned decommissioning of the VOR portion of the Hazard VOR/DME, the remaining ground-based NAVAID coverage in the areas is insufficient to enable the continuity of the affected VOR Federal airways. As such, proposed modifications to the affected VOR Federal airways would result in gaps in those airways. To overcome the airway gaps, instrument flight rules (IFR) traffic could use adjacent ATS routes, including V–35, V–97, V–178, V–310, and V–493, or receive air traffic control (ATC) radar vectors to fly through or circumnavigate the affected area. IFR pilots equipped with RNAV PBN capabilities could also navigate point to point using the existing fixes that will remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the air traffic services previously listed.

Additionally, the FAA proposes to extend RNAV routes T–215 and T–323 through the affected area to continue supporting enroute airspace users, as well as ongoing FAA NextGen efforts to transition the NAS to performance-based navigation. Minor editorial amendments to the existing T–215 and T–323 descriptions would also be made, but would not change the existing routes' structure, operational use, or charted depiction.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V–53, V–115, and V–140; modifying RNAV routes T–215 and T–323; and removing VOR Federal airway V–339. The planned decommissioning of the VOR portion of the Hazard, KY, VOR/DME NAVAID has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–53: V–53 currently extends between the Charleston, SC, VOR/Tactical Air Navigation (VORTAC) and the Brickyard, IN, VOR/DME. The airspace within R–3401B is excluded. The FAA proposes to remove the airway segment overlying the Hazard, KY, VOR/DME between the Holston Mountain, TN, VORTAC and the Lexington, KY, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–115: V–115 currently extends between the Crestview, FL, VORTAC and the Parkersburg, WV, VORTAC. The FAA proposes to remove the airway segment overlying the Hazard, KY, VOR/DME between the Volunteer, TN, VORTAC and the Charleston, WV, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–140: V–140 currently extends between the Panhandle, TX, VORTAC and the Casanova, VA, VORTAC. The FAA proposes to remove the airway segment overlying the Hazard, KY, VOR/DME between the London, KY, VOR/DME and the Bluefield, WV, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–339: V–339 currently extends between the Hazard, KY, VOR/DME and the Falmouth, KY, VOR/DME. The FAA proposes to remove the airway in its entirety.

The proposed RNAV T-route changes are outlined below.

T–215: T–215 currently extends between the Lexington, KY, VOR/DME and the GAMKE, IN, waypoint (WP). The FAA proposes to extend the route southeastward from the Lexington, KY, VOR/DME to the Holston Mountain, TN, VORTAC. Additionally, the type of facility for Lexington, KY, is corrected from ''VORTAC'' to ''VOR/DME'' and the geographic coordinates of each route point are updated to be expressed in degrees, minutes, seconds, and hundredths of a second.

T–323: T–323 currently extends between the CROCS, GA, WP and the HIGGI, NC, WP. The FAA proposes to extend the route northward from the HIGGI, NC, WP to the Hazard, KY, DME. Additionally, the geographic coordinates of each route point are updated to be expressed in degrees, minutes, seconds, and hundredths of a second.

All NAVAID radials in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) and RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be subsequently published in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019 and effective September 15, 2019, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–53 [Amended]

From Charleston, SC; Columbia, SC; Spartanburg, SC; Sugarloaf Mountain, NC; to Holston Mountain, TN. From Lexington, KY; Louisville, KY; INT Louisville 333° and Brickyard, IN, 170° radials; Brickyard. The airspace within R–3401B is excluded.

* * * * *

V–115 [Amended]

From Crestview, FL; INT Crestview 001° and Montgomery, AL, 204° radials; Montgomery; INT Montgomery 323° and Vulcan, AL, 177° radials; Vulcan; Choo Choo, TN; to Volunteer, TN. From Charleston, WV; to Parkersburg, WV.

* * * * *

V–140 [Amended]

From Panhandle, TX; Burns Flat, OK; Kingfisher, OK; INT Kingfisher 072° and Tulsa, OK, 261° radials; Tulsa; Razorback, AR; Harrison, AR; Walnut Ridge, AR; Dyersburg, TN; Nashville, TN; Livingston, TN; to London, KY. From Bluefield, WV; INT Bluefield 071° and Montebello, VA, 250° radials; Montebello; to Casanova, VA.

* * * * *

V–339 [Removed]

* * * * *

6011 United States Area Navigation Routes.

* * * * *

T–215 Holston Mountain, TN (HMV) to Gamke, IN [Amended]

Holston Mountain, TN (HMV)	VORTAC	(Lat. 36°26′13.40″ N, long. 082°07′46.56″ W)
HILTO, VA	WP	(Lat. 36°41′48.46″ N, long. 082°26′07.44″ W)
FLENR, VA	WP	(Lat. 36°56′44.27″ N, long. 082°43′42.75″ W)
RISTE, KY	WP	(Lat. 37°09′02.92″ N, long. 082°58′24.38″ W)
Hazard, KY (AZQ)	DME	(Lat. 37°23′28.52″ N, long. 083°15′46.83″ W)
HUGEN, KY	FIX	(Lat. 37°31′46.14″ N, long. 083°32′58.54″ W)
Lexington, KY (HYK)	VOR/DME	(Lat. 37°57′58.86″ N, long. 084°28′21.06″ W)
GAMKE, IN	WP	(Lat. 38°46′12.99″ N, long. 085°14′35.37″ W)

* * * * * * *

T–323 CROCS, GA to Hazard, KY (AZQ) [Amended]

CROCS, GA	WP	(Lat. 32°27′17.69″ N, long. 082°46′29.06″ W)
BOBBR, GA	WP	(Lat. 33°19′57.07″ N, long. 083°08′19.47″ W)
BIGNN, GA	WP	(Lat. 34°20′34.38″ N, long. 083°33′06.80″ W)
ZPPLN, NC	WP	(Lat. 34°59′47.42″ N, long. 083°49′37.73″ W)
HIGGI, NC	WP	(Lat. 35°26′46.57″ N, long. 083°46′41.05″ W)
KIDBE, TN	WP	(Lat. 35°51′16.23″ N, long. 083°40′19.66″ W)
ZADOT, TN	WP	(Lat. 36°35′32.17″ N, long. 083°28′40.09″ W)
WELLA, KY	WP	(Lat. 37°02′15.68″ N, long. 083°21′31.07″ W)
Hazard, KY (AZQ)	DME	(Lat. 37°23′28.52″ N, long. 083°15′46.83″ W)

* * * * *

Issued in Washington, DC, on July 20, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–15992 Filed 7–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 300

[Docket No. FDA–2019–N–5553]

RIN 0910–AI36

Annual Summary Reporting Requirements Under the Right to Try Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: To facilitate implementation of the reporting requirements of the Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2017 (Right to Try Act), the Food and Drug Administration (FDA, the Agency, or we) is proposing to establish requirements for the deadline and contents of submission of an annual summary. This proposed rule, if finalized, would implement the statutory requirement under provisions of the Right to Try Act for submission of an annual summary by sponsors and manufacturers who provide an eligible investigational drug for use by an eligible patient.

DATES: Submit either electronic or written comments on the proposed rule by September 22, 2020. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by September 22, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 22, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 22, 2020]. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions.'')

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for

information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–5553 for ''Annual Summary Reporting Requirements Under the Right to Try Act.'' 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, 240–402–7500.

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

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit comments on the information collection issues under the Paperwork Reduction Act of 1995 to the Office of Management and Budget (OMB) at *https://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. The title of this proposed collection is ''Annual Summary Reporting Requirements Under the Right to Try Act.''

FOR FURTHER INFORMATION CONTACT: Kathleen Davies, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3121, Silver Spring, MD 20993, 301–796–2205, *kathleen.davies@fda.hhs.gov.*

With regard to the information collection: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

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I. Executive Summary

A. Purpose of the Proposed Rule

The purpose of this proposed rule is to implement section 561B(d)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360bbb–0a(d)(1)), added by the Right to Try Act, which requires sponsors and manufacturers who provide an ''eligible investigational drug'' under section 561B of the FD&C Act to submit to FDA an annual summary of such use, and directs FDA to specify by regulation the deadline of submission. The proposed rule, if finalized, would provide information on the necessary contents of the annual summary and the deadline for its submission.

B. Summary of the Major Provisions of the Proposed Rule

The proposed rule would add § 300.200 to part 300 (21 CFR part 300) as a new subpart D, to specify the deadline and content for submission of an annual summary of investigational drugs supplied under section 561B of the FD&C Act, and the uses for which they were supplied. The manufacturer or sponsor of an eligible investigational drug shall submit to FDA an annual summary of any use of such drug supplied under section 561B of the FD&C Act. Per the statute, the summary shall include the number of doses supplied, the number of patients treated, the use for which the drug was made available, and any known serious adverse events from use of the drug.

C. Legal Authority

Section 561B of the FD&C Act, in conjunction with FDA's general rulemaking authority in section 701(a) of the FD&C Act (21 U.S.C. 371(a)), serve as FDA's legal authority for this proposed rule.

D. Costs and Benefits

This proposed rule, if finalized, would establish the deadline for submission of annual summaries of use of investigational drugs supplied under the Right to Try Act. The proposed rule would also establish the required contents of these submissions. Costs are estimated as the time spent by firms to prepare and submit these annual summary reports. The total estimated present value of this rule's costs is $39,991991 at a seven percent discount rate and $49,345345 at a three percent discount rate (in 2018 dollars). The annualized cost of this rule over 10 years is $5,694694 at a seven percent discount rate and $5,785785 at a three percent discount rate.

We are unable to quantify the expected benefits of this proposed rule because there is no data that would allow us to predict the extent to which direct benefits would be generated. The benefits of this rule consist of societal and public health outcomes that may accrue from the disclosure of the use of investigational drugs and any known serious adverse events provided in these annual summary reports. Without these reports, FDA would not be made aware in a systematic manner of the use of eligible drugs under the Right to Try Act and any known serious adverse events. With these reports, there may be increased awareness of investigational drugs, the diseases or conditions for which patients are seeking access, and

any known serious adverse events associated with such use.

These reporting requirements instruct firms to collect all known serious adverse events and submit them once per year to FDA. In addition, based on the information in these annual summaries, FDA intends to post online an annual summary report in accordance with section 561B(d)(2) of the FD&C Act. FDA's posting of these reports may increase awareness about the availability of investigational drugs.

II. Background

A. Introduction

On May 30, 2018, the Right to Try Act (Pub. L. 115–176) was signed into law, creating section 561B of the FD&C Act. The Right to Try Act amends the FD&C Act to establish an option for patients who meet certain criteria to request access to certain unapproved medical products, and for sponsors and manufacturers who agree to provide certain unapproved medical products other than through FDA's expanded access program.[1] This law provides a new pathway for patients to request, and manufacturers or sponsors to choose to provide, access to certain unapproved, investigational drugs, including biological products, for patients diagnosed with life-threatening diseases or conditions (as defined in § 312.81 (21 CFR 312.81)) who, as certified by a physician, have exhausted approved treatment options and who are unable to participate in a clinical trial involving the investigational drug.[2] This proposed rule is not proposing to require that physician determinations be submitted to FDA. Manufacturers or sponsors who provide their investigational product under the Right to Try Act are required to submit to FDA an annual summary of the use of their drug. Specifically, manufacturers or sponsors of an eligible investigational drug must submit to FDA an annual summary that includes the number of doses supplied of an eligible investigational drug, the number of patients treated, the use for which the drug was made available, and any known serious adverse events. Per section 561B of the FD&C Act, FDA is required to specify, through regulation, the deadline for such submissions (section 561B(d)(1)). This proposed rule, if finalized, would specify that deadline.

B. Criteria for Use Under Section 561B of the FD&C Act

The Right to Try Act provides a pathway for patients who meet certain criteria (*i.e.,* eligible patients) to request, and manufacturers or sponsors to choose to provide access, to eligible investigational drugs under certain conditions. An eligible patient, as defined in the Right to Try Act, is a patient who has:

- Been diagnosed with a life-threatening disease or condition, as defined in § 312.81 (or any successor regulations) (section 561B(a)(1)(A));
- Exhausted approved treatment options and is unable to participate in a clinical trial involving the eligible investigational drug (this must be certified by a physician who is in good standing with their licensing organization or board and who will not be compensated directly by the manufacturer for so certifying) (section 561B(a)(1)(B)); and
- Provided, or their legally authorized representative has provided, to the treating physician written informed consent regarding the eligible investigational drug (section 561B(a)(1)(C)).

An eligible investigational drug, as defined in the Right to Try Act, is an investigational drug, including a biological product:

- For which a Phase 1 clinical trial (as described in 21 CFR 312.21) has been completed (section 561B(a)(2)(A));
- That has not been approved or licensed for any use by FDA (section 561B(a)(2)(B));
- For which an application has been filed with FDA, or that is under investigation in a clinical trial that is intended to form the primary basis of a claim of effectiveness in support of FDA approval or licensure and is the subject of an active investigational new drug application submitted to FDA (section 561B(a)(2)(C)); and
- Whose active development or production is ongoing, and that has not been discontinued by the manufacturer or placed on clinical hold by FDA (section 561B(a)(2)(D)).

A manufacturer or sponsor is in the best position under the Right to Try Act to determine if an investigational drug meets these criteria. In contrast, if patients contact FDA with questions about whether a product is eligible, FDA likely will not be able to answer such inquiries because disclosure laws and regulations generally prevent the Agency from publicly sharing information about the status or existence of an investigational new drug application (IND). For these reasons, under this proposed rule, FDA is not proposing to make determinations about whether a particular investigational product is an eligible investigational drug under the Right to Try Act.

III. Legal Authority

The Right to Try Act amended Chapter V of the FD&C Act by inserting section 561B (21 U.S.C. 360bbb–0a). New section 561B(d)(1) (21 U.S.C. 360bbb–0a(d)(1)) requires FDA to specify by regulation the deadline of submission of an annual summary of the use of any eligible investigational drug under the Right to Try Act by manufacturers or sponsors, and specifies the contents of such summaries. This section, in conjunction with our general rulemaking authority in section 701(a) of the FD&C Act, serves as our legal authority for this proposed rule.

IV. Description of the Proposed Rule

We are proposing to establish a new subpart D for part 300 of Title 21 of the Code of the **Federal Register**. The proposed rule, if finalized, would specify a deadline for submission of an annual summary of use under the Right to Try Act and identify the contents for that annual summary. Although the Right to Try Act provides that FDA may require the submission of this annual summary in conjunction with the annual report for an applicable investigational drug application for such drug (as required under 21 CFR 312.33), FDA is not proposing to require that the annual summaries be submitted in the annual report. We concluded that a separate process will help to ensure that information about the use of eligible investigational drugs under the Right to Try Act is identified by FDA. We believe sponsors who provide drugs under the Right to Try Act will appreciate this effort to keep the information separate. This approach will also enhance FDA's ability to quickly identify and compile this information so we can post the required annual summary of these reports. For these reasons, we believe that a separate process will be least burdensome overall on FDA, sponsors who provide drugs under the Right to Try Act, and sponsors who do not provide drugs under the Right to Try Act (for whom there will be no obligation to review any changes with respect to the process for annual summaries). We request comment on this assumption.

[1] FDA's Expanded Access Program Information: *https://www.fda.gov/NewsEvents/PublicHealthFocus/ExpandedAccessCompassionateUse/ucm20080392.htm.*

[2] Physicians who have questions should consult with sponsors and manufacturers of eligible investigational drugs. Resources for determining whether there are available clinical trials include the sponsors of an eligible investigational drug or the website *https://www.clinicaltrials.gov/.*

A. Scope/Applicability (Proposed § 300.200)

This proposed rule, if finalized, would apply to any manufacturer or sponsor who provides an eligible investigational drug for use by an eligible patient under section 561B of the FD&C Act.

B. Definitions (Proposed § 300.200)

We are proposing to define ''eligible investigational drug'' and ''eligible patient'' as those terms are defined in section 561B(a)(1)–(2) of the FD&C Act. In addition, we are proposing to define IND as defined in 21 CFR 312.3.

We are proposing to define ''known serious adverse event'' as any serious adverse event (as defined in 21 CFR 312.32) of which the manufacturer or sponsor is aware. A manufacturer or sponsor can learn about a serious adverse event related to use of an eligible investigational drug by an eligible patient from a variety of sources. The manufacturer or sponsor should review all information about the use of an eligible investigational drug under section 561B of the FD&C Act that is obtained or otherwise received by the manufacturer or sponsor from any source. A serious adverse event would be considered to be known if information about the adverse event was reported to the manufacturer or sponsor by an eligible patient, their treating physician or representative, or another person associated with the use of an eligible investigational drug under the Right to Try Act. If a sponsor or manufacturer becomes aware of serious adverse events associated with the use of their eligible investigational drug under section 561B of the FD&C Act through a review of reports in the scientific literature, unpublished scientific papers, or other sources, the sponsor would be considered aware of the event and, as a result, it would be a known serious adverse event. Any information that the manufacturer or sponsor receives about serious adverse events from use outside of section 561B of the FD&C Act would not be considered ''known serious adverse events'' for purposes of the Right to Try Act's annual summary requirement, although they may be required to be submitted under other applicable regulations.

We are proposing to define the term ''manufacturer or sponsor'' as the person who either: (1) Meets the definition of ''sponsor'' in § 312.3 for the eligible investigational drug; (2) has submitted an application for the eligible investigational drug under section 505(b) of the FD&C Act or section 351(a) of the Public Health Service Act; or (3) produces the eligible investigational drug on behalf of such persons. Sponsors under § 312.3 take responsibility for or initiate the clinical investigation, so we expect that such persons would be well-positioned to fulfill the reporting requirements for investigational drugs provided under the Right to Try Act. Similarly, drugs and biologics applicants also take responsibility for monitoring the safety of their products, so we also expect such persons to be able to meet the reporting requirements. In addition, any person who produces the eligible investigational drug on behalf of such persons should also be able to provide FDA with the required information. Under the proposed definition, the manufacturer or sponsor would not be a person who produces only a component of the eligible investigational drug. For example, the manufacturer or sponsor would not be an excipient manufacturer that produces an inactive pharmaceutical ingredient but not the drug product provided to the eligible patient. Rather, the manufacturer or sponsor would be the person who produces the drug product that is provided to an eligible patient. Because the Right to Try Act only applies to unapproved products, we believe that the person who submits annual summaries should be closely connected to the clinical investigation or approval process. We do not believe that the reporting requirements should apply to contract manufacturers who are not closely connected to such processes. We request comment on this proposed definition. In particular, we request comment on our proposal that the term ''manufacturer or sponsor'' should only encompass persons who initiate or take responsibility for either the clinical investigations of the product or the pending applications to FDA, or who produce the eligible investigational drug provided to an eligible patient on behalf of such persons. We request comment on whether other persons would be well-positioned to provide FDA with the required information. We also request comment on whether, for persons who produce the eligible investigational drug on behalf of a sponsor or applicant, the regulatory text should specify that such persons would only meet the definition of ''manufacturer or sponsor'' if they produce the finished dosage form provided to the eligible patient.

C. Proposed Deadline for Submission of Annual Summary

We are proposing that manufacturers or sponsors submit the annual summary to FDA no later than March 31 of each year. The summary must include data for the preceding calendar year on the use of an eligible investigational drug in eligible patients under the Right to Try Act. The ''preceding calendar year'' is the period of January 1 through December 31. For example, if a sponsor provides one eligible patient with one eligible investigational drug during the period between January 1, 2021, and December 31, 2021, the sponsor would be required to submit the annual summary with information about that Right to Try Act activity no later than March 31, 2022. We propose that the first annual summary submitted by a manufacturer or sponsor under this section must cover the period from enactment of section 561B of the FD&C Act, May 30, 2018, through the date the final rule becomes effective. We also propose that the deadline for submitting the annual report will be 60 calendar days after the rule becomes effective. For example, if the final rule becomes effective February 1, 2021, then: (1) The first annual submission would be required to cover the period between May 30, 2018, and February 1, 2021; and (2) the deadline for submitting the first annual summary would be April 1, 2021. The second annual summary would cover the remaining calendar year. Thus, using the same example, the second annual summary would cover information about investigational drugs provided under section 561B of the FD&C Act between February 2, 2021, and December 31, 2021. For the second annual summary, the deadline would be March 31, 2022.

FDA is proposing March 31 of each year as the date of annual summary submission in order to provide adequate time for sponsors and manufacturers to compile the necessary data for submission to FDA after December 31 of the preceding year. We conclude that 90 days is a reasonable timeframe to compile the required information and send in the annual submissions. FDA is proposing to require annual summaries for the period between enactment of the Right to Try Act and the effective date of the final rule in order to ensure that FDA receives information about Right to Try Act activities during that period.

D. Proposed Annual Summary Submission Content

The following describes how manufacturers or sponsors can meet the statutory requirements regarding the content of the annual summary. We conclude that this information is necessary for FDA to efficiently carry out the requirements of the Right to Try Act.

1. The Name of the Eligible Investigational Drug and Applicable IND Number

FDA proposes that sponsors include the drug name and the relevant IND number as identifiers in the annual summary for the eligible investigational drug provided under the Right to Try Act.

2. Number of Doses Supplied

FDA proposes that the manufacturer or sponsor submit the total number of doses of the eligible investigational drug supplied to patients for use under the Right to Try Act during the reporting period. FDA proposes that the number of doses supplied is the total number of doses supplied regardless of whether the doses are all to one patient or to multiple patients. For example, if one patient receives three doses of an eligible investigational drug and another patient receives two doses of the same drug, the number of doses supplied is five. FDA is proposing that manufacturers or sponsors submit a total number of doses supplied and not an itemized list of doses per patient. We believe that this will make the reporting requirements less burdensome for sponsors. However, if sponsors choose, they may voluntarily provide an itemized list of doses per patient.

3. Number of Patients Treated

FDA proposes that the manufacturer or sponsor submit the total number of patients for whom the manufacturer or sponsor provided the eligible investigational drug for use under the Right to Try Act. FDA proposes that each patient be counted once, regardless of the number of doses or the number of courses of therapy they receive. For example, if a patient receives three courses of treatment with an eligible investigational drug during the reporting period, each time receiving three doses, that patient is only counted once. FDA is proposing a total number of patients treated be provided. Manufacturers and sponsors should not list individual patients to whom the drug was provided in the submission (other than for reporting of individual serious adverse events, see section IV.D.5). The Right to Try Act specifies that the annual summaries provide information about the ''*number* of patients treated'' (emphasis added).

4. Use for Which the Eligible Investigational Drug Was Made Available

FDA proposes that the manufacturer or sponsor submit a tabular summary identifying the disease or conditions for which the eligible investigational drug was made available for use under the Right to Try Act (*i.e.,* a table of diseases or conditions with the number of patients with each disease or condition). A tabular summary will streamline reporting for sponsors and manufacturers and assist FDA in efficiently fulfilling the Agency's responsibilities.

5. Any Known Serious Adverse Events and Outcomes.

FDA proposes that the manufacturer or sponsor submit a tabular summary of any known serious adverse events, including resulting outcomes of such events, experienced by patients treated with an eligible investigational drug under the Right to Try Act. The outcome of the adverse event can provide important context to enable FDA to determine if the outcomes are critical to understanding safety issues associated with the eligible investigational drug without requesting additional information for each event.

When including a known serious adverse event or its resulting outcome in the tabular summary, FDA suggests the use of medical terminology included in the Medical Dictionary for Regulatory Activities (medDRA).[3]

As discussed above, manufacturers or sponsors who provide an eligible investigational drug for use under the Right to Try Act must submit known serious adverse events associated with that use. Such sponsors and manufacturers may consider combining the table of uses and the table of known serious adverse events and outcomes of the serious adverse event. An example of a tabular summary that could be used to capture this information is provided below. To promote patient privacy, we are not proposing to require that identifying information on individual patients be provided in the submission. However, we suggest that the manufacturer or sponsor should provide an ID number used only by the manufacturer or sponsor in identifying the patient provided the drug (which could be simply a sequential numbering to identify individual patients). However, we are not proposing to include such a requirement in the regulatory text.

Eligible investigational drug	IND No.	Patient ID	Disease or condition treated	Number of doses received	Serious adverse event term	Severity—CTCAE grade 1–4 [4]	Outcome—e.g. resolved, fatal, improved, sequelae unknown
XDX501	9999999	1234567	Breast cancer	5	Hip fracture	3	Improved

E. Proposed Annual Summary Submission Location

FDA is proposing that manufacturers or sponsors submit their annual summaries under this proposed rule, if finalized, to a designated point of contact in the Office of the Commissioner. We propose to specify the designated point of contact on the FDA web page (*https://www.fda.gov*). We expect the designated point of contact would be an email contact or electronic portal. We will provide a direct weblink when this rule is finalized. All submissions of the annual summary are proposed to be submitted to FDA in an electronic format that FDA can process, review, and archive; however, we expect that eCTD format will not be required. The rationale for proposing a submission process separate from the IND submission process is to ensure that information about the use of eligible investigational drugs under the Right to Try Act can be more easily and more quickly identified by FDA. We also consider this separate submission to be preferable because many sponsors submit the same annual report to multiple regulators. By providing a separate mechanism for submitting information that is a unique reporting requirement for FDA is less burdensome than generating different annual reports for different regulators. FDA requests comment on the process proposed for submission of the required annual summaries.

V. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 60 days after publication in the **Federal Register**. FDA proposes that any manufacturer or

[3] *https://www.meddra.org/.*

[4] *https://evs.nci.nih.gov/ftp1/CTCAE/About.html.*

sponsor who provides an eligible investigational drug for use by an eligible patient in accordance with the Right to Try Act include in their first annual summary submitted under this section any use from the time of enactment of the Right to Try Act, May 30, 2018, through the date the final rule is effective. The first annual summary submitted under the Right to Try Act would be required to be submitted 60 calendar days after the rule becomes effective.

VI. Preliminary Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This proposed rule is not an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the effects are low in cost and dispersed, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $154 million, using the most current (2018) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount. This proposed rule, if finalized, implements a statutory requirement in the Right to Try Act that sponsors and manufacturers who provide an eligible investigational drug under the Right to Try Act to eligible patients submit to FDA an annual summary of such uses. The Right to Try Act also requires FDA to specify by regulation the deadline for these submissions.

The proposed rule's costs are summarized in table 1; we are unable to quantify benefits for this rule. This analysis estimates the incremental impacts of this proposed rule, if finalized, for drug sponsors and these annual summary reports. Costs are calculated as the time spent by firms to prepare and submit annual summary reports based on participation in Right to Try Act requests from eligible patients for investigational new treatments. The total estimated present value of this rule's costs is $39,991 at a seven percent discount rate and $49,345 at a three percent discount rate (in 2018 dollars). The annualized cost of this rule over ten years is $5,694 at a seven percent discount rate and $5,785 at a three percent discount rate.

The benefits of this rule consist of societal and public health outcomes that may accrue from the disclosure of the use of investigational drugs and any known serious adverse events provided in these annual summary reports. Without these reports, FDA would not be made aware in a systematic manner of the use of eligible investigational drugs under the Right to Try Act and any known serious adverse events. With these reports, there may be increased awareness of investigational drugs, the diseases or conditions for which patients are seeking access, and any known serious adverse events associated with such use.

These reporting requirements require firms to compile information about known serious adverse events and submit them in a streamlined manner once per year to FDA. In addition, based on the information in these annual summaries, FDA will post an annual summary report in accordance with section 561B(d)(2) of the FD&C Act. FDA's posting of these reports may increase awareness about the availability of investigational drugs.

Consistent with Executive Order 12866, Table 1 provides the costs and a description of benefits for this proposed rule. In line with Executive Order 13771, in Table 2, we estimate present and annualized values of costs continuing over an infinite time horizon.

TABLE 1—SUMMARY OF BENEFITS AND COSTS IN 2018 DOLLARS OVER A 10-YEAR TIME HORIZON

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Benefits:							
Annualized Monetized $/year.	.....	.....	.....	2018 2018	7 3	10 10	
Annualized Quantified	.....	.....	.....	.....	7 3		
Qualitative	.....	.....	.....	.....	.....	.....	Disclosure of serious adverse events and outcomes related to investigational new drug treatments.
Costs:							
Annualized Monetized $/year.	$5,6944 $5,7855	.....	.....	2018 2018	7% 3%	10 10	
Annualized Quantified	.....	.....	.....	.....	7% 3%		
Qualitative							
Transfers:							
Federal Annualized	.....	.....	7				
Monetized $/year	.....	.....	.....	.....	3	.....	

TABLE 1—SUMMARY OF BENEFITS AND COSTS IN 2018 DOLLARS OVER A 10-YEAR TIME HORIZON—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
From/To	From:			To:			
Other Annualized Monetized $/year.					7% 3%		
From/To	From:			To:			
Effects	State, Local or Tribal Government: Small Business: Wages: Growth:						

TABLE 2—E.O. 13771 SUMMARY TABLE

[in 2016 dollars, over a perpetual time horizon]

	Primary (7%)	Primary (3%)
Present Value of Costs	$63,120	$176,799
Present Value of Cost Savings		
Present Value of Net Costs	63,120	176,799
Annualized Costs	4,418	5,304
Annualized Cost Savings		
Annualized Net Costs	4,418	5,304

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 1) and at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section of this document with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Annual Summary Reporting Requirements Under the Right to Try Act—OMB Control Number 0910–NEW.

Description: The proposed rule would establish requirements for the deadline and contents of an annual summary for sponsors and manufacturers who provide an eligible investigational drug for use by an eligible patient.

As described in Section IV.C. Proposed Deadline for Submission of Annual Summary, sponsors and manufacturers would submit to us an annual summary no later than March 31 of each year, including data for the preceding calendar year, which is the period from January 1 through December 31. The first summary under this proposed rule, if finalized, would cover a longer period of time in order to cover the period since enactment of the Right to Try Act. As described in Section IV.E. Proposed Annual Summary Submission Location, we propose to specify the designated point of contact for submissions on the FDA web page at *https://www.fda.gov.* A direct link will be provided when the rule is finalized.

Under the proposed rule, manufacturers or sponsors would submit to us an annual summary containing the following information:

- As described in section IV.D.1, the name of the eligible investigational drug and applicable IND number;
- As described in section IV.D.2, the number of doses supplied to the eligible patient;
- As described in section IV.D.3, the number of eligible patients treated;
- As described in section IV.D.4, use for which the eligible investigational drug was made available to the eligible patient; and
- As described in section IV.D.5, any known serious adverse events and outcomes experienced by the eligible patient treated with an eligible investigational drug.

Description of Respondents: Sponsors and manufacturers who provide an eligible investigational drug to eligible patients under the Right to Try Act.

We estimate that 6 sponsors and manufacturers would prepare and submit 6 annual summaries and that it would take approximately 2.5 hours to prepare and submit each report, totaling 15 hours.

We base our estimates for the number of sponsors and manufacturers subject to this information collection and for

the number of hours on data and information discussed in Section VI. Preliminary Economic Analysis of Impacts.

In the table below, we estimate the burden of this collection of information.

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Citation; type of IC activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
300.200; Annual summaries from sponsors and manufacturers under the Right to Try Act.	6	1	6	2.5 (150 minutes)	15

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. These information collection requirements will not be effective until FDA publishes a final rule, OMB approves the information collection requirements, and the rule goes into effect. FDA will announce OMB approval of these requirements in the **Federal Register**.

IX. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

X. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would 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. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XI. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.* FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Preliminary Economic Analysis, available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects in 21 CFR Part 300

Drugs, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 300 be amended as follows:

PART 300—GENERAL

■ 1. The authority citation for part 300 shall be revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 360bbb–0a, 371.

■ 2. Add subpart D to part 300, consisting of § 300.200, to read as follows:

Subpart D—Annual Summary Reporting Requirements.

Sec.

300.200 Annual summary requirements under the Right to Try Act.

§ 300.200 Annual summary requirements under the Right to Try Act.

(a) Definitions. The following definitions of terms apply only to this section:

(1) *Eligible investigational drug.* An eligible investigational drug is as defined in section 561B(a)(2) of the Federal Food, Drug, and Cosmetic Act.

(2) *Eligible patient.* An eligible patient is as defined in section 561B(a)(1) of the Federal Food, Drug, and Cosmetic Act.

(3) *Investigational New Drug (IND).* An IND is as defined in § 312.3 of this chapter.

(4) *Known serious adverse event.* A serious adverse event (as defined in § 312.32 of this chapter) is considered ''known'' if the manufacturer or sponsor is aware of it.

(5) *Manufacturer or sponsor.* A manufacturer or sponsor is the person who:

(i) Meets the definition of ''sponsor'' in § 312.3 of this chapter for the eligible investigational drug;

(ii) Has submitted an application for the eligible investigational drug under section 505(b) of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act; or

(ii) Produces the eligible investigational drug provided to an eligible patient on behalf of the persons described in paragraphs (a)(5)(i) or (ii) of this section.

(b)(1) Except as described in (b)(2) of this section, a manufacturer or sponsor of an eligible investigational drug shall submit to the Food and Drug Administration (FDA), no later than March 31 of each year, an annual summary of any use of eligible investigational drugs supplied to any eligible patient under section 561B of the Federal Food, Drug, and Cosmetic Act for the period of January 1 through December 31 of the preceding year.

(2) For a manufacturer or sponsor of an eligible investigational drug that has supplied an eligible patient with an eligible investigational drug under section 561B of the Federal Food, Drug, and Cosmetic Act between the period from enactment of section 561B (May 30, 2018) and [DATE THE FINAL RULE BECOMES EFFECTIVE], the following deadlines apply:

(i) The manufacturer or sponsor shall submit to FDA a first annual summary covering that period no later than [DATE 60 CALENDAR DAYS AFTER THE FINAL RULE BECOMES EFFECTIVE]; and

(ii) The manufacturer or sponsor shall submit to FDA a second annual summary covering the period from [DATE THE FINAL RULE BECOMES EFFECTIVE] to December 31 [YEAR THE FINAL RULE BECOMES EFFECTIVE] by March 31 [DATE THE YEAR AFTER THE FINAL RULE

BECOMES EFFECTIVE], for any eligible investigational drugs supplied to any eligible patients under section 561B of the Federal Food, Drug, and Cosmetic Act.

(c) For each eligible investigational drug, the annual summary must include:

(1) *The name of the eligible investigational drug and applicable IND number.* The name and IND number of the eligible investigational drug supplied by the manufacturer or sponsor for use under section 561B of the Federal Food, Drug, and Cosmetic Act.

(2) *Number of doses supplied.* The total number of doses supplied by the manufacturer or sponsor to eligible patients for use under section 561B of the Federal Food, Drug, and Cosmetic Act. Each dose of an eligible investigational drug supplied for an eligible patient shall be counted as a dose supplied.

(3) *Number of patients treated.* The total number of eligible patients for whom the manufacturer or sponsor provided the eligible investigational drug for use under section 561B of the Federal Food, Drug, and Cosmetic Act. An eligible patient treated more than one time or with multiple doses of an eligible investigational drug shall be counted as a single patient.

(4) *Use for which the eligible investigational drug was made available.* A tabular summary identifying the disease or conditions for which the eligible investigational drug was made available for use under section 561B of the Federal Food, Drug, and Cosmetic Act.

(5) *Any known serious adverse events and outcomes.* A tabular summary of any known serious adverse events, including resulting outcomes, experienced by patients treated with the eligible investigational drug under section 561B of the Federal Food, Drug, and Cosmetic Act.

(d) Annual summaries submitted pursuant to this section shall be submitted in an electronic format that FDA can process, review, and archive, and shall be sent directly to a designated point of contact for submissions made under section 561B of the Federal Food, Drug, and Cosmetic Act. The annual summaries must be submitted to the designated point of contact and shall not be submitted to a particular IND. FDA will specify the designated point of contact for submission of the annual summary on FDA's website, located at *https://www.fda.gov*.

Dated: July 10, 2020.

Stephen M. Hahn,

Commissioner of Food and Drugs.

[FR Doc. 2020–16016 Filed 7–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 576

[Docket No. FR–6152–P–01]

RIN 2506–AC53

Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide that grant recipients, subrecipients, owners, operators, managers, and providers under HUD programs that permit single-sex or sex-specific facilities (such as temporary, emergency shelters or other facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or bathrooms) may establish a policy, consistent with federal, state, and local law, to accommodate persons based on sex. The proposed rule would maintain requirements from HUD's 2012 final rule entitled ''Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity'' and would require shelters to uniformly and consistently apply any such policy the shelter develops. The proposed rule would require any determination of sex by the shelter provider to be based on a good faith belief, and require the shelter provider to provide transfer recommendations if a person is of the sex not accommodated by the shelter and in some other circumstances.

DATES: *Comment Due Date:* September 22, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this Proposed Rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0500. Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Hughes, Chief of Staff, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number 202–402–7204 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8389 (toll-free number).

SUPPLEMENTARY INFORMATION:

I. History

HUD has always supported effective models at reducing homelessness and providing emergency shelter for those in

need, including through supporting single-sex or sex-specific shelters.

In 2012, HUD published a final rule entitled ''Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity'' (2012 Rule) to ensure that its core housing programs are open to all eligible families and individuals ''without regard to actual or perceived sexual orientation, gender identity, or marital status.'' [1] The 2012 Rule defined ''gender identity'' as ''actual or perceived gender-related characteristics.'' [2] The 2012 Rule generally prohibited inquiries into gender identity in determining eligibility or making housing available, but permitted inquiries related to an applicant's or occupant's sex for the limited purpose of determining placement in temporary, emergency shelters with shared bedrooms or bathrooms, or for determining the number of bedrooms to which a household may be entitled.[3] In promulgating the 2012 Rule, HUD relied on the Secretary's general rulemaking authority pursuant to section 7(d) of the Department of HUD Act,[4] rather than the Fair Housing Act [5], or other civil rights and nondiscrimination authorities.

After the promulgation of the 2012 Rule, HUD determined that the 2012 Rule did not comprehensively define how shelters must accommodate transgender individuals. On September 21, 2016, HUD expanded on its 2012 Rule and published a final rule entitled, ''Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs'' (2016 Rule). HUD mandated that transgender persons and other persons ''who do not identify with the sex they were assigned at birth'' be given access to Community Planning and Development (CPD)-assisted programs, benefits, services, and accommodations, some of which are permitted to be operated on a single-sex or sex-specific basis (collectively, ''single-sex facilities''), in accordance with their gender identity. These programs include temporary and emergency shelter programs, such as the Emergency Solutions Grants [6] program and the Housing Opportunities for Persons with AIDS (HOPWA) program.[7] The 2016 Rule maintained the definition of ''gender identity'' included in the 2012 Rule to mean ''the gender with which a person identifies, regardless of the sex assigned at birth[.]'' [8]

The 2016 Rule removed paragraph 5.105(a)(2)(ii), the provision of the 2012 Rule that allowed for lawful inquiries into an occupant's sex in the case of temporary or emergency shelters with shared bathroom or bedroom facilities, or for the purpose of determining the number of bedrooms to which a household may be entitled. Instead, the 2016 Rule contained a provision that policies and procedures must ensure that individuals are not subject to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of their gender identity.[9]

The 2016 Rule, § 5.106(c), requires that individuals seeking access to single-sex facilities be placed and accommodated in accordance with their self-identified gender identity, expressly declining to adopt a provision of the proposed rule that provided that in certain cases, an alternative accommodation for a transgender persons and other persons ''who do not identify with the sex they were assigned at birth'' would be appropriate to ensure health and safety. Section 5.106(c) requires recipients to take nondiscriminatory steps as necessary and appropriate to address the privacy concerns of all residents and occupants. No funding was specifically provided for this purpose.

Finally, the Housing Trust Fund and Rural Housing Stability Assistance programs were added explicitly to the non-exclusive list of programs covered, and language was added to indicate that the 2016 rule applies to both recipients of HUD CPD grants and subrecipients, as well as those who administer CPD-funded programs and services.

II. Proposed Rule

HUD has reconsidered its 2016 Rule and determined that providers should be allowed, as permitted by the Fair Housing Act, to consider biological sex in placement and accommodation decisions in single-sex facilities. HUD thus proposes to allow shelters that may already consider sex in admission and accommodation decisions (*i.e.,* facilities that are not covered by the Fair Housing Act) to establish a policy that places and accommodates individuals on the basis of their biological sex, without regard to their gender identity. This will allow single-sex facilities to regain the flexibility to serve their unique populations that they have following the 2012 Rule. Nothing in the proposed rule restricts shelters from maintaining a policy on placing and accommodating an individual based on gender identity.

The proposed rule leaves in place requirements from the 2012 Rule that shelters and all other participants in HUD programs ensure that their programs are open to all eligible individuals and families without regard to sexual orientation or gender identity. Thus, a shelter may place an individual based on his or her biological sex but may not discriminate against an individual because the person is or is perceived as transgender.

For example, under the proposed rule, if a single-sex facility permissibly provides accommodation for women, and its policy is to serve only biological women, without regard to gender identity, it may decline to accommodate a person who identifies as female but who is a biological male. Conversely, the same shelter may not, on the basis of sex, decline to accommodate a person who identifies as male but who is a biological female. A different shelter may choose not to make placement decisions or accommodations based on biological sex and there remains no mandate that shelters take biological sex into account.

III. Justification for the Rule Change

HUD believes this proposed rule better resolves the various equities involved within the shelter context than HUD's 2016 Rule. In particular, HUD believes that the 2016 Rule impermissibly restricted single-sex facilities in a way not supported by congressional enactment, minimized local control, burdened religious organizations, manifested privacy issues, and imposed regulatory burdens.

First, the *2016 Rule restricted single-sex facilities in a way not supported by Congressional enactment.* Congress has prohibited discrimination on the basis of sex in ''dwellings under the Fair Housing Act. But it has not acted to prohibit consideration of sex in temporary and emergency shelters, many of which do offer sex-specific housing or sex-specific areas of housing (such as facilities with physical limitations or configurations that have shared sleeping quarters or bathing areas). As the 2016 Rule recognizes, ''[a]n emergency shelter and other building and facility that would not qualify as dwellings under the Fair Housing Act are not subject to the Act's

[1] 77 FR 5662, February 3, 2012.

[2] *See* § 5.100 at 77 FR 5674. This definition comes from 18 U.S.C. 249.

[3] *See* § 5.105(a)(2)(ii) at 77 FR 5674.

[4] 42 U.S.C. 3535(d).

[5] 42 U.S.C. 3601–3619 (prohibits discrimination in housing because of race, color, national origin, religion, sex, familiar status and disability).

[6] Codified in 24 CFR part 576.

[7] Codified in 24 CFR part 574.

[8] 80 FR 72648.

[9] Section 5.106(b)(3).

prohibition against sex discrimination and thus *may be permitted by statute to be sex segregated.*'' [10] But HUD's 2016 Rule effectively restricts shelters from making this policy choice permitted by the Fair Housing Act, by—for example—requiring shelters to allow biological males who self-identify as females to be admitted to female-only shelters. Thus, under HUD's 2016 Rule, the female-specific shelters that are permitted under the Fair Housing Act can be effectively restricted from being female-specific.

Moreover, HUD did not rely on explicit statutory authorization, like the prohibition against ''sex'' discrimination under the Fair Housing Act, when HUD implemented its 2016 Rule. Rather, HUD relied on the Secretary's plenary authority to issue regulations, indicating that ''HUD's establishment of programmatic requirements for temporary, emergency shelters and other buildings and facilities funded through HUD programs is well within HUD's statutory authority and an important part of HUD's mission in ensuring access to housing for all Americans.'' But HUD should not reach beyond the authority granted to HUD by Congress. By acting under plenary authority instead of a more specific affirmative grant of authority from Congress, the 2016 Rule violated the basic principle of administrative law that an agency should not go beyond the scope of the power granted them by duly enacted legislation and imposed a regulatory burden. Agencies are to ''implement the statute according to its text and to apply the law no further than the text would permit'' because ''any attempt to do so is a threat to individual freedom.'' [11]

Second, the 2016 Rule minimized local control. The 2016 Rule also adopted a one-size-fits-all approach to admission and accommodation by gender identity in temporary shelters, despite significant variation in State and local law. In just one example, the Rule requires shelters to admit individuals based on self-identification as the only method of determining a person's sex. This approach elevates subjective assertions by persons seeking accommodation and disallows other factors that could be used to objectively verify sex. Recognizing concerns with this approach, many states and localities prohibiting transgender discrimination require a differing bar in enforcing a nondiscrimination claim based on gender identity, as three examples demonstrate.

Anchorage, Alaska, for example, requires evidence that ''the gender identity is sincerely held, core to a person's gender-related self-identity, and not being asserted for an improper purpose.'' [12] HUD's definition does not require such evidence. In a second example, New York City's code prohibits discrimination on the basis an individual's gender identity, including for housing accommodations. New York City's code defines gender to encompass perceived gender identity.[13] In contrast, HUD's current regulations define gender identity to ignore an individual's perceived gender identity. More notably, directly contrary to HUD's regulations, New York City's code explicitly *excludes* ''shelters for the homeless where such distinctions are intended to recognize generally accepted values of personal modesty and privacy or to protect the health, safety or welfare of families with children.'' [14] In a third example, Massachusetts public accommodations must accommodate individuals based upon their gender identity. Unlike HUD's current regulations, Massachusetts law does not contain a reference to the gender with which an individual identifies. Instead, it defines gender identity to mean ''a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.'' [15] Thus, this definition contains more objective factors than HUD's current, purely self-identified regime. Further, unlike HUD's current regulations, Massachusetts law provides that ''gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held as part of a person's core identity. . .'' Finally, in Massachusetts, ''gender-related identity shall not be asserted for any improper purpose. . .'' [16] while HUD's regulations contain no reference to improper purposes. Given this wide policy variation, HUD believes that shelters are best able to serve their beneficiaries when they can develop their own policies on accommodating those whose gender identity conflicts with their biological sex and that the issuance of the 2016 prescriptive rule was not appropriate.

By adopting a less prescriptive approach, HUD's new proposed rule better reflects constitutional principles of democracy and federalism. The current approach requires that shelters admit and accommodate individuals on the basis of their gender identity, even though more than 30 states do not have such a requirement. It also prescribed the means by which shelters had to determine an individual's gender identity (self-identification), even though states have differing approaches to this issue, not to mention localities. As this President's Executive Order 13132, ''Federalism,'' explains, ''issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people,'' and that the ''national government should be deferential to the States when taking action that affects the policymaking of the States. . .'' [17] HUD believes the best way to fulfill this federalism mandate—particularly in a difficult issue like this with a lack of clear national

[10] 80 FR 72644 (preamble) (emphasis added).

[11] White House memorandum ''Legal Principles for All Administrative Action,'' by Donald F. McGahn II to General Counsels and Chief Legal Officers of All Executive Branch Agencies (May 10, 2018).

[12] Anchorage Municipal Code § 5.020.010, available at: *https://library.municode.com/ak/anchorage/codes/code_of_ordinances?nodeId=TIT5EQRI_CH5.20UNDIPR_5.20.0* 10DE; *see also,* Devin Kelly, *Discrimination complaint against downtown Anchorage women's shelter opens up political front* (March 14, 2018), available at: *https://www.adn.com/alaska-news/anchorage/2018/03/14/discrimination-complaint-against-downtown-anchorage-womens-shelter-opens-up-political-front/* (''The law requires the person to prove, through medical history and evidence of care or treatment of their gender identity, that their gender identity is ''sincerely held, core to a person's gender-related self identity, and not being asserted for an improper purpose.'').

[13] *See* N.Y.C. Admin. Code § 8–102 (''Gender''), available at: *https://www1.nyc.gov/assets/cchr/downloads/pdf/TITLE_8_Human%20Rights%20Law_May%202019.pdf.* (Gender ''includes actual or perceived sex, gender identity and gender expression, including a person's actual or perceived gender-related self-image, appearance, behavior, expression or other gender-related characteristic, regardless of the sex assigned to that person at birth.'')

[14] N.Y.C. Admin. Code section 8–107(5)(k) (''Applicability''), available at: *https://www1.nyc.gov/assets/cchr/downloads/pdf/TITLE_8_Human%20Rights%20Law_May%202019.pdf.* New York City's Department of Homeless Services has recently issued binding guidance to require placement of individuals based on their self-professed gender identity. *See* NYC Department of Homeless Services, Office of Policy, Procedures and Training, DHS–PB–2019–015 (July 15, 2019), available at: *https://www1.nyc.gov/assets/dhs/downloads/pdf/dhs_policy_on_serving_transgender_non_binary_and_intersex_clients.pdf.* However, this guidance only applies to locally-funded shelters.

[15] *See* Mass. Gen. Laws ch. 22C, section 32, available at: *https://malegislature.gov/laws/generallaws/parti/titleii/chapter22c/section32.*

[16] See Mass. Gen. Laws ch. 4, section 7, available at: *https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter4/section7.*

[17] Executive Order 1313132, ''Federalism,'' 64 FR 43255, August 10, 1999.

consensus—is to refrain from enforcing a national solution.

Third, the 2016 Rule burdened those shelters with deeply held religious convictions.[18] Although not discussed in the 2016 Rule, the prescriptive approach to admission and accommodation on the basis of gender identity raises concerns about burdens on faith-based shelter providers. In some faith traditions, sex is viewed as an immutable characteristic determined at birth. Thus, legally compelled accommodation determined on a basis in conflict with the provider's beliefs could violate religious freedom precepts. For example, Hope Center in Alaska, a faith-based homeless shelter for women, sued in Federal District Court to prevent the application of a local law that would require them to serve biological males who identify as females.[19] Hope Center believes that doing so would violate their sincerely held religious belief that the Bible teaches that God creates people male or female and ''that it should care for women who lack shelter,'' thus excluding men.[20] Hope Center believes that the application of laws like HUD's 2016 Rule violate the First Amendment's Free Exercise Clause. HUD's 2016 Rule raises the same potential issue of coercing ministries like Hope to ''abandon [their] mission and message. . .''[21] in order to participate in government-funded programs.

The lack of attention in HUD's 2016 Rule to religious liberty is problematic because the Department of Justice has emphasized that ''to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity.''[22] In some instances, accommodations of religious objections are necessitated by protections in the First Amendment's Free Exercise Clause.[23] In other instances, religious accommodations may be undertaken in furtherance of a secular governmental goal that is not designed to advance or further religion.[24] And yet, to protect their religious practice, shelters currently must seek individual, specific waivers under the Religious Freedom Restoration Act or potentially under the Secretary's general waiver authority,[25] which can be both time consuming and burdensome. Further, the 2016 Rule's approach discourages some religious providers from accepting HUD funding at all, to avoid being forced to either comply with the rule or the need to request a waiver. The large percentage of single-sex facilities sponsored by religious organizations that do not participate in HUD programs may reflect the burden or perceived burden of both current HUD requirements and the waiver process. Instead of continuing a piecemeal and ineffective way of accounting for religious beliefs, HUD proposes a policy that will respect the religious beliefs of shelters as they develop the admissions and accommodations policy, provided that each policy is consistent with state and local law. By respecting the religious beliefs of shelters, HUD, can better provide wide availability of shelters to participate in the program.

Fourth, the 2016 Rule has manifested privacy issues. The current rule gives little consideration to the shelter's need to take care of the mental health and privacy concerns of at-risk clients, particularly ''the special needs of program residents that are victims of domestic violence'' along with ''dating violence, sexual assault, and stalking.''[26] A shelter may want to reduce unwelcome or accidental exposure to, or by, persons of the opposite biological sex where either party may be in a state of undress—such as in changing rooms, shared living quarters, showers, or other shared intimate facilities—to address privacy concerns which must be considered and respected.[27] Such a desire, which is critical in providing care for vulnerable populations, currently requires shelters to forego HUD assistance.

This need for privacy is especially strong among women who have ''deeper psychological issues that prevent them from cohabitating with those of the opposite sex.''[28] Homeless women have all too often been the subject of sexual abuse and assault. One study found that ''92% of a racially diverse sample of homeless mothers had experienced severe physical and/or sexual violence at some point in their lives . . .'' and another found that ''13% of homeless women reported having been raped in *the past 12 months* and half of these were raped at least twice. . .''[29] Further, between 22% and 55% of women are homeless because of intimate partner violence.[30] Given these

[18] *See, e.g., Masterpiece Cakeshop, Ltd.* v. *Colo. Civil Rights Comm'n,* 138 S. Ct. 1719, 1723 (2018) (''The case presents difficult questions as to the proper reconciliation of at least two principles. The first is the authority of a State and its governmental entities to protect the rights and dignity of gay persons who are, or wish to be, married but who face discrimination when they seek goods or services. The second is the right of all persons to exercise fundamental freedoms under the First Amendment, as applied to the States through the Fourteenth Amendment. The freedoms asserted here are both the freedom of speech and the free exercise of religion.'').

[19] *See* James Brooks, Municipality of Anchorage will pay $100,001 to settle transgender-discrimination lawsuit involving homeless shelter (October 1, 2019), available at: *https://www.adn.com/alaska-news/anchorage/2019/10/01/municipality-of-anchorage-will-pay-100001-to-settle-transgender-discrimination-lawsuit-involving-homeless-shelter/.*

[20] For a full discussion of their religious beliefs, see *The Downtown Soup Kitchen* v. *Municipality of Anchorage,* No. 3:18–cv–00190–SLG, Dkt. No. 1, ''Verified Complaint'', available at: *https://adflegal.blob.core.windows.net/mainsite-new/docs/default-source/documents/legal-documents/the-downtown-soup-kitchen-dba-downtown-hope-center-v.-municipality-of-anchorage/hope-center-v-anchorage—complaint.pdf?sfvrsn=9536cb21_4* pp. 8–10; see also Alliance Defending Freedom For Faith and Justice, *Downtown Hope Center* v. *Municipality of Anchorage, et al.,* available at: *https://adflegal.blob.core.windows.net/mainsite-new/docs/default-source/documents/resources/media-resources/cases/the-downtown-soup-kitchen-d-b-a-downtown-hope-center-v.-municipality-of-anchorage/hope-center-v-anchorage—one-page-summary.pdf?sfvrsn=fa9b07be_6.*

[21] *The Downtown Soup Kitchen* v. *Municipality of Anchorage,* No. 3:18–cv–00190–SLG, Dkt. No. 1, ''Verified Complaint'', available at: *https://adflegal.blob.core.windows.net/mainsite-new/docs/default-source/documents/legal-documents/the-downtown-soup-kitchen-dba-downtown-hope-center-v.-municipality-of-anchorage/hope-center-v-anchorage-complaint.pdf?sfvrsn=9536cb21 4.*

[22] Federal Law Protections for Religious Liberty, 82 FR 206 (October 6, 2017).

[23] The protection of the Free Exercise Clause extends to acts undertaken in accordance with sincerely held beliefs. The First Amendment guarantees the freedom to ''*exercise*'' religion, not just the freedom to ''believe'' in religion. Jurisprudence concerning this important area of law is complex and continues to develop. *See Fulton* v. *City of Phila.,* 922 F.3d 140 (3rd Cir.), *cert. granted,* 2020 U.S. LEXIS 961 (U.S. Feb. 24, 2020) (No. 19–123). HUD believes it is appropriate to take steps to ensure that rights under the Free Exercise Clause are not infringed.

[24] The Supreme Court has said that '' 'there is room for play in the joints' between the Clauses, some space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause.'' *Cutter* v. *Wilkinson,* 544 U.S. 709, 719 (2005) (internal quotation and citation omitted).

[25] 42 U.S.C. 3535(q).

[26] NAHRO Comment Letter, available at:*https://www.regulations.gov/document?D=HUD-2015-0104-0083.*

[27] *United States* v. *Virginia,* 518 U.S. 515, 550 n.19 (1996) (''Admitting women to [an all-male school] would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements''); *Fortner* v. *Thomas,* 983 F.2d 1024, 1030 (11th Cir. 1993) (''[M]ost people have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning or humiliating.''); *Fair Housing Council* v. *Roommate. Com, LLC,* 666 F.3d 1216, 1221 (9th Cir. 2012) (''As roommates often share bathrooms and common areas, a girl may not want to walk around in her towel in front of a boy.'').

[28] NAHRO Comment Letter, available at: *https://www.regulations.gov/document?D=HUD-2015-0104-0083.*

[29] *https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SAHomelessness.pdf.*

[30] U.S. Department of Health & Human Services, Administration for Children & Families, Family & Youth Services Bureau. ''Domestic Violence and

jarring statistics, some homeless women would be expected to distrust and feel unsafe around biological men, even though they self-identify as women.

HUD does not believe it is beneficial to institute a national policy that may force homeless women to sleep alongside and interact with men in intimate settings—even though those women may have just been beaten, raped, and sexually assaulted by a man the day before. The 2016 Rule minimized the shelter's ability to protect the privacy interest of shelter seekers, not so that the shelter can better serve transgender individuals, but so that the shelter is forced to admit any individual who claims to be the gender the shelter serves.

While HUD is not aware of data suggesting that transgender individuals pose an inherent risk to biological women, there is anecdotal evidence that some women may fear that non-transgender, biological men may exploit the process of self-identification under the current rule in order to gain access to women's shelters. This could harm individuals in need of shelter by chilling their participation in HUD programs. For example, in Alaska, ''women have told shelter officials that if biological men are allowed to spend the night alongside them, 'they would rather sleep in the woods,' even in extreme cold. . .with temperatures hovering around zero.'' [31] HUD is also aware of a pending civil complaint in Fresno, California from nine homeless women against Naomi's House, a homeless shelter that receives HUD funding. These women allege that the shelter enabled sexual harassment because a biological male who self-identified as a female entered a homeless shelter and showered with females. This individual would ''repeatedly make lewd and sexually inappropriate comments to some of the Plaintiffs,'' ''stare and leer at Plaintiffs while naked and make sexually harassing comments about their bodies,'' and show ''sexual pictures and/or videos of [the individual] and mak[e] sexual advances on some of the pictures and/or videos of [the individual] and mak[e] sexual advances on some of the Plaintiffs.'' [32]

The 2016 Rule attempted to address privacy and security through post-admission accommodations and procedures, but this has proven unworkable for too many shelters without alternative options to address practical and privacy concerns. Shelters operate in difficult conditions, often with troubled clientele, through overburdened and sometimes volunteer staff, and the current rule makes it impracticable for some shelters to, after admitting a biological male, adequately protect the privacy interests of their biological female clientele who do not want to shower, undress, and sleep in the same facilities as biological men. While HUD argued in 2016 that shelters could address privacy concerns through ''schedules that provide equal access to bathing facilities, and modifications to facilities, such as the use of privacy screens and, where feasible, the installation of single occupant restrooms and bathing facilities,'' [33] HUD believes that this is not an option for many shelters, whose budgets, staff, and space are already limited.

HUD recognizes that shelters must also take special care to address the mental health and safety needs of transgender individuals. HUD is aware that transgender individuals experience poverty, housing instability, mental health issues, domestic violence, and homelessness at high rates. Given the rates of violence and mistreatment that homeless transgender persons experience, HUD recognizes that shelter access for transgender persons is critical. Thus, the proposed rule requires that if a shelter denies access to a person based on a determination of sex, the shelter must utilize the CoC's centralized or coordinated assessment system to provide a transfer recommendation to an alternative shelter or accommodation.

Shelters may also choose to admit individuals on criteria other than biological sex. For example, under the proposed rule, a single-sex facility could continue to operate under the policy set forth in the 2016 Rule. Under that policy, an intake worker at a single-sex homelessness facility would ask an individual their gender identity, and if the person identified themselves with the gender served by the facility, they would be admitted. Under the proposed rule, a single-sex facility for women could have a policy that only admits biological women. A shelter would have the flexibility to implement this policy as they feel appropriate, provided that they only deny an individual seeking accommodation or access to the temporary, emergency shelters when they have a good faith belief that individual is not of the sex which the shelter's policy accommodates and they provide a transfer recommendation as required under the regulation. Denial of accommodation solely because of a person's gender identity that differs from biological sex is not permitted.

Shelters could also have policies that follow state or local law, such as perceived gender identity, that varies from the HUD definition of self-identified gender identity. Other possible policies could be based on medical transition status, active hormone therapy or state recognized gender status. The key test for such policies is whether if another shelter adopted a ''mirror'' policy (that is, the same policy but directed at the other sex), any person not accommodated at one shelter would be accommodated at the other shelter.

In practice, where people seeking shelter are asked their sex at intake into the facility, and if they identify themselves as the sex that is served by the shelter, they are admitted unless the shelter has a good faith basis to doubt the consistency of the sex asserted with the sex served by the shelter, determined in accordance with its own policy. Where such doubt exists, the shelter could also have a list of possible sources of evidence the shelter seeker could provide such as a birth certificate, other identification, or medical records. This could occur at intake or subsequently, if the shelter resident is unable to verify their sex, the shelter would work through the centralized or coordinated assessment system to provide a transfer recommendation for another shelter.

This approach would better protect shelter clients as well. Under HUD's 2016 Rule, while privacy accommodations may sometimes be available for individuals who need additional privacy, ''alternative accommodations can only be offered when an individual requests it, and under these proposed regulations, housing providers are likely only left with the option of moving the domestic violence victim resident. But some individuals may hesitate to raise their concerns, for fear of retaliation by the service provider or because they do not know whether privacy accommodation is an available option. HUD believes the easier approach would be to let shelters accommodate privacy concerns in a

Homelessness: Statistics (2016).'' Published, June 24, 2016, accessed March 21, 2017. Available at: *https://www.acf.hhs.gov/fysb/resource/dvhomelessnessstats2016* (cited by *http://womensliberationfront.org/wp-content/uploads/2019/04/MAILED-Copy-of-Hands-Across-the-Aisle-Letter-to-HUD_dated-5-1-17.pdf).*

[31] Rachel D'Oro, *Faith-based shelter fights to keep out transgender women* (January 11, 2019), available at:*https://www.apnews.com/85494d367c2d4a38b1749f76a89f49c3.*

[32] *McGee* v. *Poverello House,* No. 1:18–cv–00768–LJO–SAB, 2018 U.S. Dist. LEXIS 189174, at *3 (E.D. Cal. Nov. 5, 2018).

[33] 81 FR 64763, September 21, 2016.

manner that causes the least overall disruption to residents.

Finally, the 2016 Rule imposed regulatory burdens. The rule imposes several different types of regulatory burdens. It imposes a special document retention requirement applicable to determinations of ''sex'' that is burdensome and not supported either by statute or practice. This burden is inconsistent with Executive Orders directing agencies to ''alleviate unnecessary regulatory burdens placed on the American people,'' [34] and ''manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.'' [35] Additionally, as discussed above in the fourth point, shelters may not have the resources to build individual privacy screens or single occupant restrooms and bathing facilities to address any privacy concerns that may arise.

These regulatory burdens could have a material impact on the availability of homelessness services. HUD's Emergency Solutions Grants program and other CPD programs provide a small share of the funding that is used for emergency shelters. For example, in fiscal year 2019, HUD's Emergency Solutions Grants program provided $290 million in funding. In contrast, with nearly 300,000 emergency shelter beds and costs ranging from $14 to $61 per bed-night for individuals and more for families, overall spending for emergency shelter is several billion dollars per year.

The lack of shelter capacity in many communities contributes to high numbers of people who experience unsheltered homelessness. Local governments and nonprofit organizations utilize any potential space to use as shelter, and many times, these shelters operate under severe financial constraints. Providing additional options for operating single-sex facilities as proposed by this rule may encourage more emergency shelters to participate in HUD's programs and prevent the loss of emergency shelter capacity. The additional funding could be used to upgrade facilities and services, improving the quality of assistance for people experiencing homelessness.

IV. Summary of Proposed Rule

This proposed rule would revise § 5.106(c)(1) to expressly allow a recipient, subrecipient, owner, operator, manager, or provider to establish its own policies for determining whether to restrict access based on an individual's sex for the purposes of determining admissions and accommodation within a single-sex facility. Such a policy could align with, or borrow from, a state or local government's policy for determining an individual's sex,[36] but is not required to do so. The rule also provides in paragraph (c)(1) that such policies must be consistent with federal, state, and local law. Under paragraph (c)(2) a recipient, subrecipient, owner, operator, manager, or provider is permitted to take into account a wide variety of factors in issuing a policy, including privacy, safety, and similar concerns.

Proposed paragraph (c)(3) would restrict how a single-sex facility would apply the policy drafted under paragraph (c)(1) and require the single-sex facility to apply its policy uniformly and consistently. It would also provide that a recipient, subrecipient, owner, operator, manager, or provider may determine an individual's sex based on a good faith belief that an individual seeking access to the temporary, emergency shelters is not of the sex, as defined in the single-sex facility's policy, which the facility accommodates. HUD would consider this good faith beliefs sufficient to show that a decision maker was not discriminating for purposes of determining compliance based on an individual's actual or perceived gender identity in § 5.105(a)(2). HUD believes that reasonable considerations may include, but are not limited to a combination of factors such as height, the presence (but not the absence) of facial hair, the presence of an Adam's apple, and other physical characteristics which, when considered together, are indicative of a person's biological sex. A good faith determination could also be made if a person voluntarily self-identifies as the biological sex that is opposite that served by the single sex facility if that is a part of its policy. In cases where a recipient, subrecipient, owner, operator, manager, or provider has a good faith belief that the individual is not of the biological sex served by the single-sex facility, the recipient, subrecipient, owner, operator, manager, or provider may request evidence of the individual's biological sex. Evidence requested must not be unduly intrusive of privacy, such as private physical anatomical evidence. Evidence requested could include government identification, but lack of government identification alone cannot be the sole basis for denying admittance on the basis of sex.

Continuum of Care (CoC) is a regional or local planning group that coordinates homelessness services and is generally composed of representatives from governments and organizations that focus on fighting homelessness. CoCs are responsible for ensuring that people experiencing homelessness receive assistance in a coordinated and timely fashion. Specifically, CoCs are required to create and implement a plan that coordinates implementation of housing and service system that meets the needs of people experiencing homelessness (§ 578.7(c)(1)), and the requirement for CoCs, in consultation with a local recipient of Emergency Solutions Grants funds to operate a coordinated entry system that provides an initial, comprehensive assessment of needs for housing and services (§ 578.7(a)(8)). To help promote these objectives, HUD provides in paragraph (d)(4) of this proposed rule that if a single-sex facility denies access to a person under this rule based on a good faith belief that a person seeking access to the single-sex facility is not of the biological sex which the shelter accommodates, a shelter must use the coordinated entry system to provide a transfer recommendation to an alternative facility. In addition, the rule more broadly provides that if a person objects to the provider's policy for determining sex because of the person's sincerely held beliefs, then the shelter must also provide a transfer recommendation to an alternative shelter.

Finally, HUD proposes to remove paragraphs (b)(1) through (4), inclusively, which currently enumerates the applications of the antidiscrimination provision, in favor of a streamlined reference to § 5.105(a)(2). Section 105(a)(2) entitles equal access to HUD-assisted housing by prohibiting determinations for housing eligibility from being based on actual or perceived sexual orientation, gender identity, or marital status.

The proposed rule would also eliminate the previously discussed burdensome special document retention requirement in the current rule applicable to determinations of ''sex.'' This proposed rule does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity, as it does not prohibit a shelter, under its own policy, from recognizing such self-identification.

Other than these specified changes, the current regulations would remain in effect. HUD believes that a combination of strong anti-discrimination protections

[34] Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' 82 FR 12285, March 1, 2017.

[35] Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' 82 FR 9339, Feb. 3, 2017.

[36] See, *e.g.,* Iowa state law for determining sex designation change. Iowa Code Ann. 144.23.

and affording grantees a large measure of discretion in an area with divergent, deeply held and substantially supported views offers the broadest workable protection for individuals, including transgender individuals.

This proposed rule would also amend § 576.400(e)(3)(iii) to add language allowing for exceptions as authorized under § 5.106 to written standards for HUD's Emergency Solutions Grant Program.

Request for Comments

1. HUD is maintaining the nondiscrimination protections from its 2012 rule, even though they lack an explicit statutory authorization, because HUD is not aware of any relevant party that has raised any material concerns about the 2012 rule. HUD believes all federally supported housing opportunities should be provided to all in a nondiscriminatory manner, including for sexual orientation and gender identity. HUD specifically seeks comments on whether HUD should maintain the anti-discrimination protections?

2. HUD requests comments on what are good faith considerations that are indicative of a person's biological sex. Should HUD define what constitutes a good faith belief for determining biological sex and what type of evidence would be helpful for determining an individual's biological sex? How, if at all, should government IDs be considered?

3. CoCs are responsible for creating and implementing a plan that coordinates the housing and service system that meets the needs of people experiencing homelessness (including unaccompanied youth) and families and includes, shelter, housing, and supportive services (§ 578.7(c)(1)). HUD is proposing that for people who are denied access to shelter because of a policy regarding admission or placement in single-sex facilities, the shelter must provide a transfer recommendation for individuals to the Coordinated Entry provider for the Continuum of Care. HUD is also seeking comment on what requirements, if any, HUD should include in the final rule to ensure that shelter policies are coordinated and implemented in a way that allows all persons experiencing homelessness in the geographic area (including persons with disabilities) to be served timely and in a non-discriminatory manner? Is the requirement of providing a transfer recommendation unduly burdensome or does it otherwise pose operational challenges?

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order.

The proposed rule has been determined to be a ''significant regulatory action,'' as defined in section 3(f) of the Order, but not economically significant under section 3(f)(1) of the Order. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Executive Order 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an Agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the Agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. This proposed rule is expected to be a deregulatory action under Executive Order 13771 by providing flexibility for grantees in determining their policies.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Environmental Review

This proposed rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The number of entities that would be affected by this rule is limited to entities who can legally operate single-sex facilities and would change or establish policy as a result of the accommodation needs addressed by this rule. HUD does not have the exact number of entities that would be affected. However, as an example, approximately out of the 1,900 emergency shelters are funded by HUD programs. Out of this 1,900, HUD does not know how many of those would issue a new policy. Nor does HUD know how many of those are small entities. HUD specifically requests from the public any information about the number of small entities that might be impacted.

Furthermore, HUD anticipates that entities who develop a policy as a result of this rule will generally face only a small burden in determining and establishing an organizational policy. Accordingly, for the foregoing reasons, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this proposed rule would not have a significant effect on a substantial number of small entities, HUD specifically invites comments on

whether it will not have a significant effect and regarding any less burdensome alternatives to this rule that will meet HUD's objectives.

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 or is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 576

Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR parts 5 and 576 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

■ 2. In § 5.100, revise the first sentence of the definition of ''*Gender identity*'' to read as follows:

§ 5.100 Definitions.

* * * * *

Gender identity means actual or perceived gender-related characteristics. * * *

* * * * *

■ 3. In § 5.106, revise the section heading and paragraphs (b) and (c), and remove paragraph (d) to read as follows:

§ 5.106 Access in community planning and development programs.

* * * * *

(b) *Access.* The admissions, occupancy, and operating policies and procedures of recipients, subrecipients, owners, operators, managers, and providers identified in paragraph (a) of this section shall be established or amended, as necessary, and administered in a nondiscriminatory manner to ensure that eligibility determinations are made, and assisted housing is made available in CPD programs as required by § 5.105(a)(2).

(c) *Admission and accommodation in temporary, emergency shelters and other buildings and facilities with shared sleeping quarters or shared bathing facilities*—(1) *Admission and accommodation policies.* Recipients, subrecipients, owners, operators, managers, or providers of temporary, emergency shelters or other buildings and facilities with physical limitations or configurations may make admission and accommodation decisions based on its own policy for determining sex if the policy is consistent with paragraphs (c)(2) through (4) of this section. Any such policy must be consistent with federal, state, and local law.

(2) *Privacy and safety considerations.* The policy of a recipient, subrecipient, owner, operator, manager, or provider established pursuant to paragraph (c)(1) of this section may consider privacy, safety, and any other relevant factors.

(3) *Application of the policy.* A recipient, subrecipient, owner, operator, manager, or provider must apply any policy established pursuant to paragraph (c)(1) of this section in a uniform and consistent manner. A recipient, subrecipient, owner, operator, manager, or provider may deny admission or accommodation in temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities based on a good faith belief that an individual seeking accommodation or access to the temporary, emergency shelters is not of the sex which the shelter's policy accommodates. If a temporary, emergency shelter has a good faith belief that a person seeking access to the shelter is not of the sex which the shelter accommodates, the shelter may request information or documentary evidence of the person's sex, except that the shelter may not request evidence which is unduly intrusive of privacy.

(4) *Transfer recommendation.* If a temporary, emergency shelter denies admission or accommodations based on a good faith belief that a person seeking access to the shelter is not of the sex which the shelter accommodates as determined under its policy, the shelter must use the centralized or coordinated assessment system, as defined in § 578.3 of this title, to provide a transfer recommendation to an alternative shelter. If a person states to the temporary, emergency shelter that the provider's policy for determining sex is inconsistent with the person's sincerely held beliefs, including privacy or safety concerns, then the shelter must use the centralized or coordinated assessment system, as defined in § 578.3 of this title, to provide a transfer recommendation to an alternative shelter.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 4. The authority for 24 CFR part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11371 *et seq.,* 42 U.S.C. 3535(d).

§ 576.400 [Amended]

■ 5. In § 576.400, add the parenthetical ''(these policies must allow for the exceptions as authorized under the Equal Access Rule, 24 CFR 5.106)'' at the end of paragraph (e)(3)(iii).

Dated: July 2, 2020.

Benjamin S. Carson, Sr.,

Secretary.

[FR Doc. 2020–14718 Filed 7–23–20; 8:45 am]

BILLING CODE 4210–67–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket Nos. 17–95 and 18–315; FCC 20–66; FRS 16884]

Earth Stations in Motion

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks to further develop the record regarding potential interference from out-of-band emissions of ESIMs in the 28.35–28.6 GHz band into the adjacent 27.5–28.35 GHz band used by Upper Microwave Flexible Use

Service (UMFUS). These actions will promote innovative and flexible use of satellite technology, as well as provide regulatory equity between GSO and NGSO FSS systems.

DATES: Comments are due August 24, 2020. Reply comments are due September 22, 2020.

ADDRESSES: You may submit comments, identified by IB Docket Nos. 17–95 and 18–315, by any of the following methods:

- *Federal Communications Commission's website: http://apps.fcc.gov/ecfs.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Cindy Spiers, 202–418–1593.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*Further Notice*), IB Docket Nos. 17–95 and 18–315, FCC 20–66, adopted on May 13, 2020, and released on May 14, 2020. The full text of this document is available at *https://docs.fcc.gov/public/attachments/FCC-20-66A1.pdf.* The full text of this document is also available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, 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).

Synopsis

In this *Further Notice,* we seek to further develop the record regarding potential interference from out-of-band emissions of ESIMs [1] in the 28.35–28.6 GHz band into the adjacent 27.5–28.35 GHz band used by Upper Microwave Flexible Use Service (UMFUS). These actions will promote innovative and flexible use of satellite technology, as well as provide regulatory equity between GSO and NGSO FSS systems.

Further Notice of Proposed Rulemaking

In this *Further Notice,* we seek further comment on the Commission's proposal to allow ESIMs to communicate with NGSO FSS space stations in the 28.35–28.6 GHz band. On May 4, 2020, Verizon and US Cellular filed an *ex parte* raising concerns regarding potential interference from out-of-band emissions of ESIMs in the 28.35–28.6 GHz band into the adjacent 27.5–28.35 GHz band used by UMFUS.[2] We believe this issue merits further discussion and expansion of the record. Therefore, we ask whether the current out-of-band emission limits in § 25.202(f) would be sufficient to protect UMFUS operations in the 27.5–28.35 GHz band. We also ask for comments on what level of interference generated by out-of-band emissions from ESIM operations with NGSO space stations above 28.35 GHz would be acceptable for UMFUS receivers operating immediately below 28.35 GHz, while at the same time not unduly constraining ESIM operations above 28.35 GHz. We seek comment on whether UMFUS receivers have been designed to account for the interference environment created by pre-existing operations in adjacent bands.[3] We also request comment on whether UMFUS operators are developing equipment characteristics that make them less susceptible to unwanted energy generated by adjacent band users, and thus more compatible with such users.

The out-of-band emissions limit for UMFUS licensees is –13 dBm/MHz measured either as conductive or total radiated power.[4] We seek comment on whether ESIM operations should be required to meet this limit below 28.35 GHz. Further, given that ESIM operations require highly directive antennas, should the out-of-band emissions limit be specified as an EIRP limit?

We seek comment on whether typical ESIM operations meeting the out-of-band limits in § 25.202(f) produce interference above these acceptable levels.[5] We note that the emissions below 28.35 GHz under the part 25 rule depends on the ESIMs transmit power and channel bandwidth whereas the UMFUS limit is a set limit.

Next, if acceptable levels of interference are exceeded what measures should be taken to ensure out-of-band emissions are appropriately limited? We seek comment on whether a sufficiently wide guard band could serve to protect UMFUS receivers. If a guard band could serve to protect UMFUS receivers, we ask for comment on how wide this guard band should be. Further, we seek comment on whether a guard band would be applicable only in certain ESIM operational scenarios (*i.e.* VMES, ESAA on the ground, ESV in a port).

Additionally, we seek comment on whether setting a minimum elevation angle for ESIM operations with NGSO FSS space stations would be an effective way of achieving the desired balance between protecting UMFUS operations without over constraining FSS operations above 28.35 GHz. Alternatively, when transmitting to a NGSO FSS space station, should we limit the ESIM out-of-band EIRP density towards the horizon or within a certain range of elevation angles?

Finally, we seek comment on whether aggregation of interference, including that from clutter reflections, should be considered, or is interference likely to be determined by the strongest (closest) interfering source. Given that ESIMs and UMFUS transmitters will likely differ in terms of antenna patterns, heights, and pointing directions, how would aggregate interference from ESIMs differ from that caused by adjacent UMFUS licensees? If aggregate interference is a significant issue, what assumptions

[1] The term ''ESIMs'' is the collective designation for three types of earth stations that the Commission authorizes to transmit while in motion: Earth Stations on Vessels (ESVs), Vehicle-Mounted Earth Stations (VMESs), and Earth Stations Aboard Aircraft (ESAAs) to communicate with space stations using frequencies allocated to the fixed satellite service. Broadly stated, Earth Stations on Vessels refers to earth stations that communicate with a satellite while located on maritime vessels such as boats, cargo ships or cruise ships, whereas Vehicle-Mounted Earth Stations and Earth Stations Aboard Aircraft refer to earth stations that communicate with satellites while located on land-based vehicles or aircraft, respectively.

[2] *See* Verizon May 4 *Ex Parte* Letter. In response to Verizon's May 4 *Ex Parte* Letter, other parties filed *ex partes* in opposition. *See* SES Americom, Inc. and O3b Limited, Inmarsat, Inc., Hughes Network Systems, LLC, and EchoStar Satellite Services, L.L.C. May 6 Ex Parte Letter; Viasat May 6 Ex Parte Letter.

[3] Currently, ESIMs can operate with GSO space stations using the 28.35–28.6 GHz band.

[4] 47 CFR 30.203.

[5] We also note that there is currently an open Commission proceeding that proposes to replace the out-of-band emissions limits in § 25.202(f) with those in Recommendation ITU–R SM.1541–6. *Further Streamlining Part 25 Rules Governing Satellite Services,* Notice of Proposed Rulemaking, 33 FCC Rcd 11502, 11507–08, paras. 18–19 (2018).

should be made in modeling aggregate interference for various use cases of ESIMs?

Ex Parte Procedures. The proceeding this *FNPRM* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[6] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Comment Filing Requirements. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents* in *Rulemaking Proceedings,* 63 FR 24121 (1998).

[6] 47 CFR 1.1200 *et seq.*

- *Electronic Filers.* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs.*
- *Paper Filers.* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this *Further Notice,* of the possible significant economic impact on small entities of the policies and rules addressed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on or before the dates indicated on the first page of this Notice. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Further Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Further Notice.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the Notice for comments. The Commission will send a copy of this *Further Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

The Further Notice of Proposed Rulemaking proposes to further develop the record to determine the best option to deal with the potential interference from out-of-band emissions of ESIMs in the 28.35–28.6 GHz band into the adjacent 27.5–28.35 GHz band used by Upper Microwave Flexible Use Service (UMFUS), generated by ESIM transmissions to NGSO FSS space stations in frequencies above 28.35 GHz.

B. Legal Basis

The proposed action is authorized under sections 1, 4(i), 301, 303, 307, 308, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303, 307, 308, and 309.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by adoption of proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we

describe and estimate the number of small entity licensees that may be affected by adoption of the proposed rules.

Satellite Telecommunications. This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

All Other Telecommunications. The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications'', which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49, 999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

We estimate, however, that some space station applicants applying under part 25 of the Commission's rules would qualify as small entities affected by these rule changes. If the Commission were to apply the bond requirement to amateur and experimental space station licensees, then additional small entities would be affected by the rule changes.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The FNPRM proposes to develop the record on the level of interference generated by out-of-band emissions from ESIM operations with NGSO space stations above 28.35 GHz that would be acceptable for UMFUS receivers operating immediately below 28.35 GHz, while at the same time not unduly constraining FSS operations above 28.35 GHz. This would protect all users in the various bands and reduce paperwork costs for such satellite operators by establishing a mutually acceptable sharing environment.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

The FNPRM seeks comment on whether setting a minimum elevation angle for ESIM operations with NGSO FSS space stations would be an effective way of achieving the desired balance between protecting UMFUS operations without over constraining FSS operations above 28.35 GHz. The FNPRM alternatively considers whether, when transmitting to a NGSO FSS space station, the Commission should limit the ESIM out-of-band e.i.r.p density towards the horizon or within a certain range of elevation angles. These changes may reduce the economic and other impacts for other service providers. However, the Commission invites comment on these options and any alternatives.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–13784 Filed 7–23–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2019–0025; FF09E22000 FXES11130900000 201]

RIN 1018–BD45

Endangered and Threatened Wildlife and Plants; Reclassification of Morro Shoulderband Snail (*Helminthoglypta walkeriana*) From Endangered to Threatened With a 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the Morro shoulderband snail (*Helminthoglypta walkeriana*) from an endangered to a threatened species under the Endangered Species Act of 1973, as amended (Act), and we propose a special rule under section 4(d) of the Act. This proposed reclassification is based on our evaluation of the best available scientific and commercial information, which indicates that the species' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range, but that it is still likely to become so in the foreseeable future. We also propose to update the Federal List of Endangered and Threatened Wildlife to reflect the latest scientifically accepted taxonomy and nomenclature for the species as *Helminthoglypta walkeriana,* Morro shoulderband snail. We seek information, data, and comments from the public on this proposal. We also announce the availability of an assessment of the status of the Chorro shoulderband snail (*Helminthoglypta morroensis*) in which we conclude that the species does not meet the definition of a threatened species or an endangered species.

DATES: We will accept comments received or postmarked on or before September 22, 2020. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 8, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**

below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2019–0025, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: Docket No FWS–R8–ES–2019–0025, U.S. Fish and Wildlife Service, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Document availability: A copy of the Species Status Assessment Report referenced throughout this document is available at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2019–0025.

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, tribes, the scientific community, industry, and other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Reasons why we should or should not reclassify the Morro shoulderband snail from an endangered to a threatened species under the Act;

(2) New biological or other relevant data concerning any threat (or lack thereof) to this species;

(3) New information on efforts by the State or other entities to protect or otherwise conserve the species;

(4) New information concerning the range, distribution, and population size or trends of this species;

(5) New information on current or planned activities in the habitat or range that may adversely affect or benefit the species; and

(6) Information on activities or areas that might warrant being exempted from the section 9(a)(1) take prohibitions proposed in this rule under section 4(d) of the Act. The Service will evaluate ideas provided by the public in considering the extent of prohibitions that are necessary and advisable to provide for the conservation of the species.

Please include sufficient supporting information with your submission (*e.g.,* scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Submissions that merely provide support for or opposition to the action under consideration without supporting information, although noted, may not meet the standard of information required by section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). This standard directs us to make determinations whether any species is endangered or threatened ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials on this proposed rule by one of the methods listed in **ADDRESSES**. We request you send comments only by the methods described in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* we will post your entire submission—including any personal identifying information—on the website. If you make your submission via a hardcopy and it includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so as we post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date shown in **DATES.** We will schedule a public hearing on this proposal, if any are requested, and announce the date, time, and place of those hearings, as well as how to obtain reasonable accommodation, in the **Federal Register** at least 15 days before the first hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we have sought the expert opinions of six appropriate and independent specialists regarding the Species Status Assessment (SSA) Report for the Morro Shoulderband Snail and Chorro Shoulderband Snail, which informed the determination in this proposed rule. The purpose of peer review is to ensure that our determinations and designations are based on scientifically sound data, assumptions, and analyses. The six peer reviewers we selected have expertise in shoulderband snail biology, taxonomy, habitat, and threats (factors negatively affecting the species), and their comments helped inform our determination. We received responses from all six peer reviewers, which we considered in our SSA report and this proposed rule. These comments will be available along with other public comments in the docket for this proposed rule. Additionally, we will consider all comments and information we receive during the comment period on this proposed rule as we prepare the final determination. Accordingly, the final decision may differ from this proposal.

Previous Federal Actions

In 1994, we listed *Helminthoglypta walkeriana* (the banded dune snail) as endangered (59 FR 64613). This taxon contained two entities: *H. walkeriana* (what we now consider the Morro shoulderband snail) and *H. walkeriana morroensis* (what we now consider the Chorro shoulderband snail). At the time of listing, we thought the subspecific entity *morroensis* was extinct and that there may have been as few as several hundred individuals of *Helminthoglypta walkeriana* remaining (59 FR 64615); consequently, we did not consider the

morroensis subspecies to be part of the listed entity.

In 1997, the subspecific entity *morroensis* was rediscovered at North Point Natural Area near the northern limit of Morro Bay (Roth and Tupen 2004, p. 3). In subsequent years it was found in other areas as well. In 1998, we completed a Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County (Service 1998, entire) and in 2001 designated critical habitat (66 FR 9233). Both the recovery plan and critical habitat addressed only *Helminthoglypta walkeriana* and not the subspecific entity *morroensis,* as explained above.

In 2004, a taxonomic analysis was completed that elevated these subspecific taxa to full species: *Helminthoglypta walkeriana* and *H. morroensis* (Roth and Tupen 2004, entire). After 2004, *H. walkeriana* and *H. morroensis* were associated with the common names Morro shoulderband snail and Chorro shoulderband snail, respectively. Also in 2004, in an attempt to provide clarity on what was the listed entity, the Ventura Fish and Wildlife Office issued a ''Dear Stakeholders and Interested Parties'' letter stating we would no longer be regulating the Chorro shoulderband snail (Service 2004, entire).

However, in 2006 the Service completed a 5-Year Review for both the Morro and Chorro shoulderband snail and recommended downlisting Morro shoulderband snail from endangered to threatened and delisting of Chorro shoulderband snail (Service 2006, entire), even though the Chorro shoulderband snail had previously not been treated as part of the listed entity.

Neither entity, *Helminthoglypta walkeriana morroensis* or the newly recognized *Helminthoglypta morroensis,* was ever formally added to the endangered species list. Because of its confusing history, however, we have determined that it is most appropriate to now complete a listing assessment to determine whether or not the Chorro shoulderband snail meets the definition of threatened or endangered. Using the results of our evaluation in the SSA Report, we reaffirm the finding in our 5-year review that the information on the threats to the Chorro shoulderband snail does not support the species being listed as threatened or endangered under the Act. Since *Helminthoglypta morroensis* is not currently included on the Federal List of Endangered and Threatened Wildlife, no revision to the list is needed to implement this determination. Our full determination and threats analysis regarding the status of the Chorro shoulderband snail is available in a Species Assessment form at Docket No. FWS–R8–ES–2019–0025 on the internet at *http://www.regulations.gov.*

In this proposed rule, we address the status of the Morro shoulderband snail. This proposed rule also constitutes our 5-year status review for the Morro shoulderband snail. Additionally, as a result of the new data and supportive references noted above, we propose to recognize the change in the common name of the listed entity *H. walkeriana* as the Morro shoulderband snail. We have included this proposed change in nomenclature in the Proposed Regulation Promulgation section of this proposed rule, and we expect to adopt it when we publish a final determination for this action.

Background

It is our intent to discuss only those topics directly related to the reclassification of Morro shoulderband snail from an endangered species to a threatened species in this proposed rule. In this section, we summarize the conclusions of the SSA Report, including the species description, ecology, habitat, and resource needs. We also discuss recovery plan implementation. In our SSA Report, we define viability as the ability of the species to sustain populations in the wild over time and provide a thorough account of the species' overall condition currently and into the future. The full SSA Report is available at Docket No. FWS–R8–ES–2019–0025 on the internet at *http://www.regulations.gov.*

Species Description

The Morro shoulderband snail belongs to the land snail genus, *Helminthoglypta* (Ancey 1887), which contains three subgenera comprising more than 100 species and subspecies. Morro shoulderband snail shells are umbilicate (having a depression at the center), globose (spherical), reddish brown to chestnut in color, thin, and slightly translucent (Roth 1985, p. 5). The shell has five to six whorls and a single, narrow (2 to 2.5 millimeters (mm) [0.08 to 0.1 inches (in.)]), dark spiral band on the ''shoulder'' with thin light-yellowish margins above and below. Sculptural features of the shell include incised spiral grooves, spiral and transverse striae (grooves) that give the surface a checkerboard-like look, and papillae (small, round protrusions) at the intersections of some of the striae (Walgren 2003, p. 93). Adult shell dimensions range from 18 to 29 mm (0.7 to 1.1 in.) in diameter and from 14 to 25 mm (0.6 to 1.0 in.) in height (Roth 1985, p. 5).

Species Ecology, Habitat, and Resource Needs

In general, we know very little about the specific life history of Morro shoulderband snails. Using information compiled for other *Helminthoglypta* species (van der Laan 1975a, entire; 1975b, entire; 1980, entire), we infer information and apply it to the species, where appropriate. Like many species of *Helminthoglypta* that occur in Mediterranean climate regions of California, the Morro shoulderband snail has adapted to changing environmental conditions by having a two-part life cycle. While feeding, reproduction, and most individual growth occur during the rainy season (Roth 1985, p. 13), individuals spend the majority of the year in aestivation (prolonged dormancy) to survive the drier seasons (Belt 2018, pers. comm.). Refugia used for the aestivation phase of the life cycle for the Morro shoulderband snail appear to be opportunistic in nature. They can include native and nonnative plant species, including dense clumps of native and nonnative grasses; young patches of ice plant (*Carpobrotus* spp.); cactus (*Opuntia* spp.); and anthropogenic features and debris (*e.g.,* stockpiled construction materials, wood, cement, plastic) (Roth and Tupen 2004, p. 17; SWCA 2013–2017, entire; Dugan 2018, pers. comm.).

For *Helminthoglypta* species living in California, most activity occurs during the rainy season (Roth 1985, p. 13), and this is the case for Morro shoulderband snail. In coastal San Luis Obispo County, the period of greatest activity generally extends from October through April but can vary each year depending on the frequency and duration of seasonal rainfall and heavy fog/dew. During this period, individuals may be particularly active during the evening, night, and early morning hours when humidity is higher. Individuals can also be active during overcast and rainy days (van der Laan 1980, pp. 49, 52; USDA 1999, p. 3; Tupen 2018, pers. comm.). The Morro shoulderband snail likely emerges from aestivation during and following periods of rainfall in search of food resources and for mating and egg-laying activities.

Species of *Helminthoglypta,* like other terrestrial snails, become inactive during prolonged dry periods and enter a state of aestivation where individuals produce an epiphragm (a seal of dried mucus) across the shell aperture to greatly reduce water/weight loss (van der Laan 1975b, p. 361). They frequently

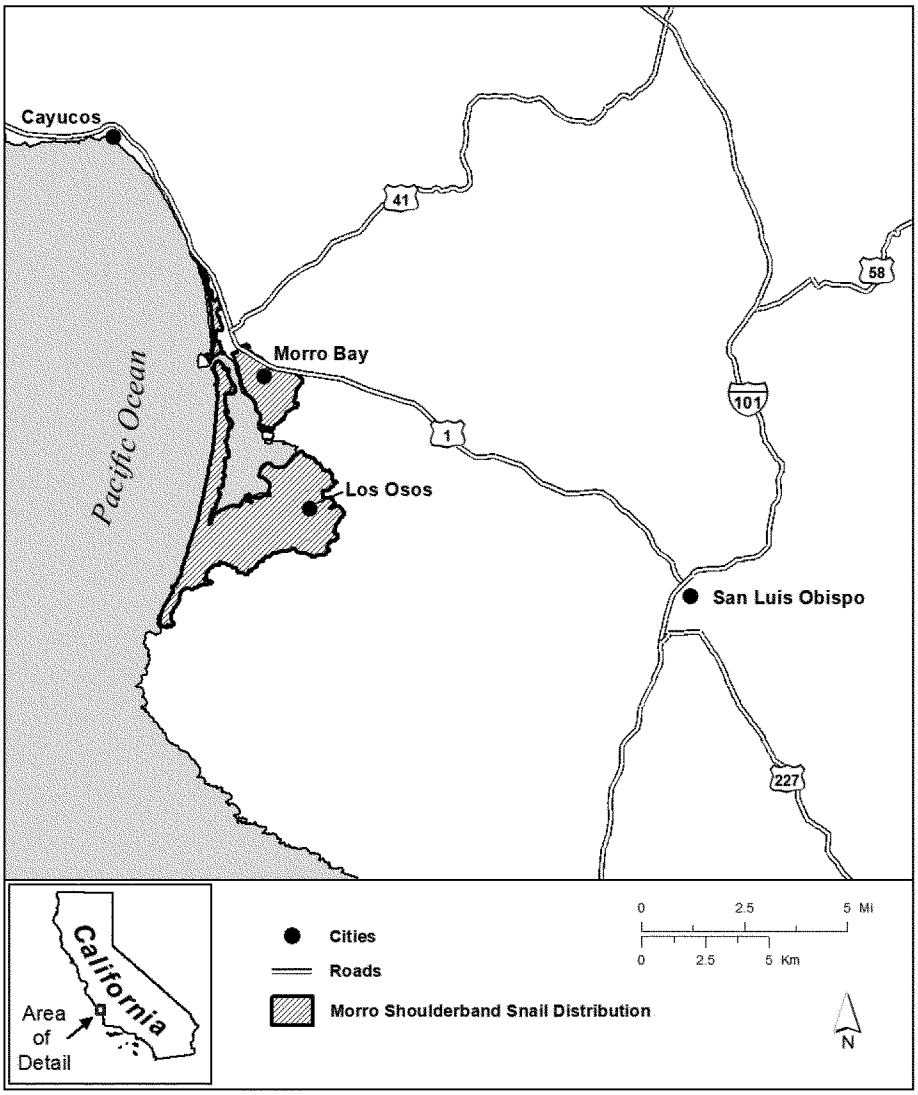
aestivate attached to the lower outer branches of shrubs (van der Laan 1975b, p. 365; Roth 1985, p. 13). This attachment to a substrate may provide additional protection from desiccation by forming a more complete seal of the aperture (van der Laan 1975b, p. 365). There is a possible decreased vulnerability to predation during dormancy when the attachment point is 20–30 centimeters (7.9–11.8 in.) above the ground surface (van der Laan 1975b, p. 365). Smaller snails tended to experience higher mortality rates during aestivation, possibly due to their thinner shells and higher surface-to-volume ratios (van der Laan 1975b, p. 364). Individuals come out of aestivation after rain events that thoroughly wet the environment and may regain as much as 50 percent of their body weight back within 24 hours (van der Laan 1975b, p. 364).

Like other terrestrial snails, we expect the Morro shoulderband snail to have a patchy distribution coincident with the presence of suitable refugia and food sources.

Species Distribution and Abundance

Initially, Hill (1974, p. 6) and others projected a very limited distribution for *Helminthoglypta walkeriana* (as the coastal form of the banded dune snail). Its range was thought to extend only a short distance inland along the southeastern shore of Morro Bay to Shark Inlet, southward to near Islay Creek, and northward on the Morro Bay sand spit at the western edge of the community of Los Osos. In the listing rule, the Service expanded the range to include the coastal dune and coastal sage scrub communities underlain by sandy soils near Morro Bay (*i.e.,* Los Osos) (59 FR 64613, December 15, 1994). Based on known species occurrences and soil associations, we used the presence of Baywood Fine Sand soils and small areas of Dune Land soils to determine distribution. We currently estimate the distribution for the Morro shoulderband snail to be approximately 2,638 hectares (ha) (6,520 acres (ac)) located in and around the community of Los Osos/Baywood Park and City of Morro Bay (Figure 1). At the time of listing, we estimated that there may have been as few as several hundred individuals of *H. walkeriana* (currently, Morro shoulderband snail) extant. Based on the most recent surveys, thousands of Morro shoulderband snails currently exist in this area (SWCA 2018, p. 7).

Figure 1. Distribution of the Morro shoulderband snail (*Helminthoglypta walkeriana*).



Using known species occurrence and estimated abundance along with the presence of suitable soil types, we identified six geographic units (hereafter, Population Areas) for the purpose of discussion in our SSA Report. These include North Morro Bay, Sand Spit, Morro Bay, East Los Osos, Downtown Los Osos, and South Los Osos. For a map and detailed description of these Population Areas, please reference the SSA Report (Service 2019, pp. 24–29). The level of survey effort throughout each of the six Population Areas comprising the distribution of the Morro shoulderband snail is limited and variable. For this reason, we are not able to make comparable estimates for species abundance. The Downtown and South Los Osos Population Areas have been subject to a greater level of survey effort associated with required monitoring for the installation of infrastructure to connect the community of Los Osos with its wastewater system. Between 2012 and 2017, more than 2,200 individuals were found in these two Population Areas, with over 80 percent occurring in the Downtown Los Osos area (SWCA 2018, p. 5).

Portions of the North Morro Bay, Sand Spit, Morro Bay, East Los Osos, and South Los Osos Population Areas are within California Department of Parks and Recreation (hereafter, State Parks) ownership, but comprehensive surveys or monitoring have not been conducted. From discussions with State Parks biologists, we know Morro shoulderband snails are present on State Park lands in Montaña de Oro and Morro Bay State Parks and Morro Strand State Beach, portions of which are found within several of the Population Areas. Data on the level of species occupation and condition of individuals is generally lacking (Walgren and Andreano 2018, pers. comm.). There have been no comprehensive surveys for the Morro shoulderband snail conducted on the California Department of Fish and Wildlife's (CDFW) Morro Dunes Ecological Reserve (MDER); however, based on species observations and presence of suitable habitat, CDFW assumes the reserve contains a robust population of the species (CDFW in litt. 2018). While we know the species is present on MDER (Service files; Stafford 2018, pers. comm.), there is no evidence that the population is robust or that large numbers of individuals are present. Survey data gathered between 2012 and 2017 in contiguous habitat of similar quality and species composition indicate greater Morro shoulderband snail numbers in disturbed habitats than in native habitats (SWCA 2018, p. 5).

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: ''Objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is an endangered species or a threatened species (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that we make our determination ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should help indicate when we would anticipate that an analysis of the species' status under section 4(a)(1) would result in a determination that the species is no longer an endangered or threatened species.

While recovery plans provide important guidance to the Service, States, and other partners regarding methods to minimize threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to reclassify a species' status or remove it from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) is ultimately based on an analysis of the best scientific and commercial data available at the time. We use these data to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan. Below, we summarize recovery plan goals for the Morro shoulderband snail and discuss progress made toward meeting recovery plan objectives in terms of how they inform our analyses of the species' status and the stressors affecting them.

In 1998, we completed the *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California,* which included recovery goals and objectives for Morro shoulderband snail (Recovery Plan; Service 1998, pp. 40–41). The Recovery Plan identified criteria for downlisting Morro shoulderband snail from an endangered to a threatened species and criteria for its delisting. The Recovery Plan identifies four Conservation Planning Areas (CPAs). These CPAs were designed to incorporate areas where distribution of the Morro shoulderband snail and three other plant species covered in the plan overlap; thus, they are more limited than the Population Areas for the Morro shoulderband snail defined in the SSA.

Our summary analysis of downlisting and delisting criteria follows:

The Recovery Plan states that downlisting from endangered to threatened can be considered when sufficient populations and suitable occupied habitats from all CPAs are secured and protected (Service 1998, p. 39). These areas should be intact and relatively unfragmented by urban development. Snail populations must be large enough to minimize the short-term (next 50 years) risk of extinction on any of the four CPAs identified in the recovery plan, based on results of tasks 3.2.1.1, 3.2.1.2, and 3.2.1.3 (see below) and on at least preliminary results from task 4.1. The identification and survey of potential habitat within the snail's historic range to see if undiscovered populations exist is necessary to consider downlisting.

All of CPA 1 (Morro Spit) and portions of CPAs 2, 3, and 4 (West Pecho, South Los Osos, and Northeast Los Osos) are largely secure under various ownerships and management (Service 2019, pp. 72–74). All have conservation easements, deed restrictions, or are managed by a conservation association for conservation purposes. Landowners and managers include the County, State Parks, CDFW, the Land Conservancy of San Luis Obispo County, Morro Coast Audubon Society, and the Small Wilderness Area Program (SWAP). Approximately 202 ha (500 ac) have been added to conserved lands since time of listing. This includes 56 ha (138 ac) of parcels purchased and transferred to the California Department of Parks and Recreation (CDPR) or CDFW managed for conservation purposes and 141 ha (348 ac) with conservation easement or deed restriction managed for conservation purposes. Overall, 85 percent (approximately (1,457 ha (3,600 ac)) of CPAs are now conserved. However, a lack of funding precludes adequate threats management on most of these lands (Service 2019, p. 53).

Recovery Task 3.2.1.1 is to determine if brown garden snail (*Cornu aspersum* [formerly *Helix aspersa*]) is a competitive threat to the Morro shoulderband snail. Since the time of listing, we found that the Morro shoulderband snails feed primarily on dead plant materials and the brown garden snail consumes live plant materials, so competition between these species is likely minimal (Service 2019, p. 75). Task 3.2.1.2 involves the study of habitat use and life-history needs of the Morro shoulderband snail. Monitoring and habitat restoration activities conducted in association with the construction of a sewer system in the community of Los Osos have generated substantial new information on the diversity of habitats in which the species can occur and numbers of individuals present. We also have new information based upon anecdotal observations and surveys conducted in association with proposed development in the Los Osos area (Service 2019, pp. 28–30). Task 3.2.1.3 is to identify Morro shoulderband snail parasites and determine if parasitism rates are threatening populations. At the time of listing, parasitism was identified as a threat to the species, based on observations of vacant sarcophagid fly puparia within empty subadult shells (59 FR 64613, 64619; December 15, 1994). Since the time of listing, there has been an increase in snail observations, but there has not been a corresponding increase in sarcophagid fly pupae infestations of snails. There are a few species in this fly family that have been documented to eat live material (Walgren 2003, pp. 108–114; USFWS 2006, p. 7). While there have been no specific studies on the potential threats to the snail from these sarcophagid flies, the majority of flies in this family do not eat live organisms; thus, we conclude that the flies do not pose a threat to the species (Service 2006, p. 13). Therefore, the best available current evidence does not indicate that parasitism is a threat to the species.

Finally, Task 4.1 is to monitor populations to document population dynamics and cycles to ascertain trends. There has been no systematic monitoring conducted to provide data that would allow for trend analysis. However, based on the most recent surveys, thousands of Morro shoulderband snails were detected across its range, as compared to hundreds known at the time of listing (Service 2018, pp. 28–30; SWCA 2018, p. 5; Walgren and Andreano 2018, pers. comm.). Therefore, though we do not have specific trend data, we conclude that we have still met the intent of this criterion.

Delisting can be considered when habitats from all CPAs (and any newly located populations) are successfully managed to maintain the desired community structure and are secured from threats of development, invasion of nonnative plants, structural changes due to senescence of dune vegetation, recreational use, pesticides (including slug and snail baits), parasites, and competition or predation from nonnative snail species. The outcomes of recovery tasks must result in a low medium-to-long-term risk of extinction from any of the four CPAs (Service 1998, p. 40).

Our analyses in the SSA Report indicate that the current viability of Morro shoulderband snail has improved to some degree since the time of listing due to concerted conservation efforts, predominantly in the form of land acquisition, and substantially more individuals than previously thought. Based on our future scenario analyses, the species is still at risk in the future due to the potential for development and because the level of continued conservation efforts and habitat management is uncertain. Currently and into the future, habitat loss due to development and habitat degradation, predominantly from invasive plant species, remain threats to the Morro shoulderband snail.

To improve habitat for the species, the Morro Coast Audubon Society has a dedicated volunteer work force to target removal of invasive nonnative plant species who remove *Ehrharta calycina* (perennial veldt grass) and *Eucalyptus globulus* (blue gum) seedlings at their Sweet Springs Preserve (outside of any CPA) under the direction of a Recovery Action Plan. The Los Osos/Morro Bay Chapter of SWAP does the same for the Elfin Forest Reserve in CPA 4. State Parks staff annually prioritize areas for invasive species treatment on a case-by-case basis. When funding is available, they implement actions to control invasive species in Montaña de Oro State Park, Morro Strand State Beach, Morro Bay State Park, and Los Osos Oaks Preserve (CPAs 1 and 2, portions of 3 and 4, and Area A). Identified invasive species prioritized for removal include *E. calycina, Conicosia pugioniformis* (narrowleaf iceplant), *Emex spinosa* (devil's thorn), *Cortaderia* species, and *Eucalyptus* species because they are the most invasive and conspicuous in the landscape.

Lack of funding precludes most State of California resource agencies (*e.g.,* State Parks and CDFW) from implementing invasive species control programs on lands where these species are present. State Parks staff have conducted limited prescribed burns and proposed additional prescribed burns to improve the quality of coastal dune scrub and central maritime chaparral and their constituent species within their park units. Fires typically kill snails, but if properly applied in small areas to create a mosaic of varying stand ages for coastal dune scrub and central maritime chaparral, such burns could improve the quality of these habitats for Morro shoulderband snail in the long term. Previous threats to habitat resulting from illegal off-road vehicle activities are largely controlled; however, illegal trail development and use by hikers, mountain bikers, and equestrians negatively affects habitat for Morro shoulderband snails by increasing erosion, reducing native plant cover, and facilitating further invasion by nonnative plant species (Service 2018, pp. 75–76).

Based on the Recovery Plan and our SSA Report, we conclude that the status of the Morro shoulderband snail has improved throughout its range from the significant preservation or conservation of habitat once at risk of development, along with land use decisions and management activities undertaken by the County of San Luis Obispo (County) and landowners since the time of listing. The SSA Report contains an accounting of known conservation and management efforts (Service 2019, pp. 23–24). Overall, our analysis indicates that the intent of the downlisting criteria for the Morro shoulderband snail has been met; however, delisting criteria have not yet been achieved.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in reclassifying a species from endangered to threatened (50 CFR 424.11(c)–(e)).

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be reclassified as a threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R8–ES–2019–0025 on *http://www.regulations.gov.*

To assess Morro shoulderband snail viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this section, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

We reviewed the potential threats that could be affecting Morro shoulderband snails now and in the future. In this proposed rule, we discuss in detail only those factors that could meaningfully affect the status of the species. At the time of listing, we identified urban development and other anthropogenic activities such as recreation, grazing, and utility construction as threats to the Morro shoulderband snail (59 FR 64613, December 15, 1994). In the SSA Report (Service 2019, pp. 21–64), we reviewed four potential threats that could be affecting the Morro shoulderband snail in the current conditions section (development, agriculture, vegetation management, and predation), and those threats and two others (wildfire, invasive species) in the future conditions section. The primary risk factors affecting the Morro shoulderband snail are the present and threatened modification or destruction of its habitat from development,

wildfire, and invasive plant species (Factor A), as well as effects to its life cycle from changing climate conditions (Factor E). We also considered the effect of existing regulatory mechanisms (Factor D) on the magnitude of threats. Additional threats affecting the species' habitat include agriculture (Factor A) and vegetation management (Factor A), and threats affecting the species include predation (Factor C); however, we have determined that these threats have little to no impact on species viability. We also analyzed the threat of collection (Factor B). At the time of listing, we stated that the taxonomic distinctiveness of the Morro shoulderband snail made it vulnerable to recreational or scientific collectors. Since the time of listing, however, we are not aware of specific collection activities for recreational or scientific purposes.

Development

At the time of listing, development was identified as one of the main threats impacting the Morro shoulderband snail. Human development consists of converting the landscape into residential, commercial, industrial, and recreational features, with associated infrastructure such as roads. Converting the landscape into development not only removes individual Morro shoulderband snails but also removes their habitat, thereby reducing the space available for the species to inhabit and functionally lowering carrying capacity. In addition, development results in indirect effects by fragmenting the habitat and creating edge effects, such as increased vulnerability to desiccation, fire, and predation. The effects of development on the Morro shoulderband snail are predicated upon several factors (*e.g.,* how the City and County of San Luis Obispo revise and implement their respective general plans, the economy, water availability).

However, as detailed in the SSA, conservation actions have been undertaken since the time of listing to reduce the threat of development (Service 2018, pp. 24–25). Approximately 202 ha (500 ac) of Morro shoulderband snail habitat have been conserved since the time of listing. This includes 56 ha (138 ac) of parcels purchased and transferred to the CDPR or CDFW and 141 ha (348 ac) with conservation easement or deed restriction; all of these areas are managed for conservation purposes. Overall, 85 percent (approximately (1,457 ha (3,600 ac)) of CPAs are now protected from development. Although most lands within its distribution outside of CPAs are not under formal or legal protection as open space or conservation easements, many are protected as part of a State Park, State of California ecological reserve, or parcels set aside specifically to conserve and enhance natural resource values. For example, the County of San Luis Obispo's Broderson and Midtown parcels are both protected through deed restrictions that preclude development other than that which would enhance habitat that supports Morro shoulderband snails. With increased conserved lands the threat of development has been reduced since the time of listing, but some potential impacts remain that could result in the loss of populations and thus the loss of representation and redundancy across the species' range. For example, large portions of the East Los Osos and Downtown Los Osos Population Areas consist predominantly of public and private land parcels zoned for development. Apart from the protections afforded by the Act, the existing regulatory mechanisms do not address the impacts of development on the Morro shoulderband snail.

Invasive Species

Invasion of native habitat by nonnative plant species can reduce suitability for native constituent species that evolved in these habitats. Areas dominated by a single invasive plant species tend to support lower levels of animal diversity due to a reduction in heterogeneity as compared to the original native plant community (Steidl and Litt 2009, p. 57). The presence of nonnative plant species can also alter the abundance of native plants that serve as an important food source for herbivores, such as snails. Invasive plant species can increase vegetative cover and reduce space between native plant species in native communities. Invasive plant species can change fuel properties in native habitats, which can then affect fire behavior and alter fire regime characteristics such as frequency, severity, extent, type, and seasonality (Brooks et al. 2004, entire). In coastal dune scrub and maritime chaparral, native communities that typically support a sparse understory, invasive grasses, such as perennial veldt grass, can serve as ladder fuel to carry fire into these communities. Fires can also create an opportunity for invasive plant species to expand their local distributions and dominance (Brooks and Lusk 2008, p. 9).

While once thought to be largely restricted to native coastal scrub communities underlain by sandy soils, Morro shoulderband snails are known to persist, at least in the short term, in disturbed areas and those dominated by nonnative species (*e.g.,* perennial veldt grass, ice plant) (SWCA 2018, p. 5). Biologists and land planners typically classify these areas as ruderal or ''disturbed'' and, as such, discount them in terms of their conservation value. Ruderal, disturbed, and nonnative grassland habitats are, therefore, subject to mowing, herbicide use, development, and other uses that put individual Morro shoulderband snails in these areas at a greater risk of injury or mortality than those found in native habitat.

Currently, three of the six Population Areas that support the Morro shoulderband snail are in moderate- or low-quality habitat, with impacts from nonnative species (Service 2019, pp. 37–38). Habitat in these areas is either somewhat degraded (one Population Area) (9.5 percent of species distribution) or highly degraded and fragmented (two Population Areas) (38.3 percent of species distribution).

Both the Morro Coast Audubon Society and SWAP conduct activities to improve habitat quality for the Morro shoulderband snail and other coastal dune scrub species on lands conserved and protected under their ownership and/or management (Sweet Springs Nature Preserve and Elfin Forest, respectively). These actions focus primarily on the removal of exotic plant species (perennial veldt grass, iceplant), restoration of coastal dune scrub, and erosion control. The CDPR also conducts similar activities on its lands (*i.e.,* Montaña de Oro and Morro Bay State Parks and Morro Strand State Beach). The County of San Luis Obispo owns two large parcels in Los Osos, Broderson and Mid-Town, that support coastal dune scrub and, to a lesser extent, central maritime chaparral. Management actions on both parcels focus on the restoration and enhancement of habitat for the Morro shoulderband snail (KMA 2017, entire; County of San Luis Obispo 2017, entire). The Land Conservancy of San Luis Obispo County recently purchased approximately 5.7 ha (14 ac) adjacent to the Morro Coast Audubon Society Sweet Springs Preserve. They plan to enhance habitat quality for coastal dune scrub species, including Morro shoulderband snail, before transferring these lands to Morro Coast Audubon Society ownership and management (Theobald 2017, pers. comm.). Overall, while these conservation measures have decreased the overall impact of invasive plant species, degradation of native habitats from those species is ongoing. Apart from the protections afforded by the Act, the existing regulatory mechanisms

do not address the impact of invasive species.

Wildfire

Morro shoulderband snails evolved in a fire-adapted landscape dominated by coastal dune scrub and maritime chaparral. Exposure to fire can result in individual mortality; however, an evolutionary strategy has enabled the species to persist in these habitats. Theories related to the nature of fire history in California shrublands are complicated and varied (Goforth and Minnich 2007, p. 779). In the range of the Morro shoulderband snail, the ''natural'' condition was one of frequent, small fires that fragmented the landscape into a fine-grained mosaic of age classes that precluded large, catastrophic fires (Minnich and Chou 1997, p. 244). In this type of situation, areas of unburned coastal dune scrub and central maritime chaparral would serve as refugia for individual snails that could then recolonize areas as the fire-adapted plant communities reestablished.

We consider an increase in wildfire frequency and/or intensity associated with continued climate change to be a plausible in the future within the range of the Morro shoulderband snail (Service 2019, entire). A landscape-level or more severe fire event would constitute a threat to the species due to its very limited distribution. This type of fire could leave little in the way of habitat to serve as native refugia and result in a substantial amount of individual mortality, increasing the likelihood of local population extirpation. Absent individuals in nearby habitat to recolonize burned areas as habitat reestablishes, large-scale fire could result in a reduction in the overall distribution of the species, and thus loss of redundancy and representation. The existing regulatory mechanisms do not address the impact of wildfire on the Morro shoulderband snail or its habitat.

Climate Change

Climate change is likely to affect many terrestrial gastropod populations in California, including the Morro shoulderband snail. Species with small geographic ranges are particularly vulnerable to extinction due to the effects of climate change (Allan et al. 2005, p. 284). In the range of the Morro shoulderband snail, climate change may result in both droughts and localized flood events from heavy rainfall. In the future, extreme storm events may increase in severity beyond historic levels of intensity with potential to increase flood risks in California (Dettinger 2011, pp. 521–522). Future estimates of changes in temperature and precipitation patterns in California by the 2060s based on downscaled climate models show that the historically maximum July temperatures are likely to increase and heat waves may span longer durations (Pierce *et al.* 2013, entire).

The increased frequency of protracted drought events predicted in California is likely to result in higher mortality during prolonged periods of seasonal aestivation, particularly among smaller individuals in the population (van der Laan 1975b, p. 364). Higher levels of egg mortality from desiccation are expected. Warmer temperatures and greatly reduced wet season precipitation during prolonged multiyear drought events also increase stress on vegetation (Coates et al. 2015, p. 14277) and may limit time for feeding and breeding in the Morro shoulderband snail. Coastal sage scrub communities had the highest seasonal variability in terms of the relative amount of ground covered by green vegetation during the drought years of 2013–2014 (Coates et al. 2015, p. 14283). Coastal sage scrub plant species also had the highest land surface temperature values of the communities analyzed, likely resulting from lower vegetation cover, lower evapotranspiration, and south-facing slopes typical of coastal sage scrub communities (Coates et al. 2015, p. 14284). These effects of prolonged drought reduce the value and quality of sheltering habitat as well as food availability within the primary plant community associated with the Morro shoulderband snail. Combined with impacts from wildfire, invasive species, and development, the negative effects of climate change on growth and reproduction are likely to result in decreased population abundance and increased vulnerability to local extirpation into the future.

Summary of Threats

We examined the effects of threats affecting the Morro shoulderband snail and its habitat; we now summarize these threats and their cumulative effects on the species. Currently, the species and its habitat are being impacted by development, invasive nonnative plants, wildfire, and effects associated with climate change. Along with a decrease in habitat quality due to increased temperatures and increased frequency of droughts, the effects of climate change may also exacerbate low population size and fragmented habitats, resulting in increased risk of extirpation. The effects of climate change will also combine with the effects of development, wildfire, and invasive species to exacerbate habitat loss and mortality of individuals. However, the magnitude of threats has decreased since the time of listing, and conservation actions have addressed impacts from development and nonnative plants. Still, the species' low abundance and fragmented habitat mean it is vulnerable to threats into the future, including potential extirpation of Population Areas by wildfire.

Current and Potential Future Condition

We assessed the viability of the Morro shoulderband snail by evaluating its ability to maintain a sufficient number and distribution of healthy populations in order to maintain resiliency, redundancy, and representation. We analyzed threats to the species and ongoing conservation actions by incorporating the effects of development, invasive species, wildfire, and changing climate conditions into our analyses of resiliency, representation, and redundancy.

For the Morro shoulderband snail to maintain viability, its populations, or some portion thereof, need to be resilient to stochastic events. Resiliency is measured by the size and growth rate of each population, which influence the likelihood that the populations comprising a species are able to withstand or bounce back from environmental or demographic stochastic events. We evaluated variables influencing the ability of the Morro shoulderband snail to withstand stochastic events by Population Area, including abundance (as available); distribution of individuals; habitat quality and configuration; and the likelihood that suitable habitat would persist into the future. To determine habitat quality and configuration in each Population Area, we evaluated its context in the overall landscape relative to fragmentation and whether one or more of those primary constituent elements identified for critical habitat designated in 2001 (66 FR 9233, February 7, 2001) are present. Primary constituent elements for this species include the following physical or biological features: Sand or sandy soil needed for reproduction; a slope not greater than 10 percent to facilitate movement of individuals; and native coastal dune scrub vegetation. To determine the likelihood that suitable habitat will persist into the future, we evaluated the proportion of protected habitat in each Population Area. We then created an overall current condition for each Population Area based on these three variables.

Based on overall current condition, we then forecasted the condition of these variables into the future for 30 years under three different scenarios. The three future scenarios attempt to encompass the range of plausible possibilities for each Population Area over the next 30 years. To forecast climate change impacts, we relied on scientific papers (Dettinger 2011, entire; Pierce et al. 2013, entire) that incorporated multi-model ensembles and downscaled regional climate projections that examine key characteristics relating to the Morro shoulderband snail, such as summer temperatures and seasonal changes in precipitation.

First, we forecasted the condition of each Population Area under the status quo, with continued climate change effects, all existing threats continuing at their current level, and no additional conservation efforts for the species (Status Quo). Second, we forecasted the condition of each Population Area under implementation of the LOHCP, a draft regional Habitat Conservation Plan that proposes the Morro shoulderband snail as a covered species, against a backdrop of continued climate change effects (Limited Conservation). In this scenario, the LOHCP consolidates the threat of development to one Population Area, while other existing threats continue at their current level. Finally, we forecasted implementation of the LOHCP, active management for the Morro shoulderband snail within existing protected but generally unmanaged lands, and additional habitat protection through acquisition and subsequent management (Major Conservation), again against a backdrop of continued climate change. This scenario includes decreased threats due to development and invasive plant species, as well as conservation benefits from habitat restoration.

TABLE 1—SUMMARY OF MORRO SHOULDERBAND SNAIL RESILIENCY: CURRENT AND FUTURE CONDITIONS BY POPULATION AREA

Population area	Current condition	Future scenario: status quo	Future scenario: limited conservation	Future scenario: major conservation
North Morro Bay	Moderate	Moderate	Moderate	High
Sand Spit	High	Moderate	Moderate	High
Morro Bay	Low	Low	Low	Low
East Los Osos	Moderate	Low	Low	Moderate
Downtown Los Osos	Moderate	Low	Low	Low
South Los Osos	High	Moderate	High	High

Maintaining representation of healthy populations across the diversity of habitat types or ecological gradients within the distribution of Morro shoulderband snail will likely conserve the relevant genetic diversity and adaptive capacity associated with individual persistence across these habitat types. Currently, there is species representation in all of six Population Areas; however, changes under future scenarios could put individuals in some Population Areas at greater risk of extirpation, resulting in a potential loss of representation and leaving the species extant only in the periphery of its range.

The Morro shoulderband snail needs multiple resilient Population Areas distributed throughout its extremely limited distribution to provide for redundancy. Historically, based on the mapping of Baywood Fine Sand soils, it is likely that habitat was once well-distributed throughout the species' range. Development now primarily separates these Population Areas. Low resiliency and disconnected Population Areas, currently and in the future, suggest that stochastic events could increase species vulnerability to loss of redundancy and could increase the risk of loss of Population Areas, which would then diminish species redundancy. An overall decrease in the condition of Population Areas in two of the three future scenarios suggests a potential compromised redundancy and, therefore, risk of extirpation from catastrophic events in the future, unless major conservation actions are undertaken. Prolonged and/or more intensive drought, increased wildfire frequency and/or intensity, and localized flooding are those events that could affect the Morro shoulderband snail at the catastrophic scale.

The resiliency of Morro shoulderband snail Population Areas within its distribution has changed over time due to loss, degradation, and/or fragmentation of native habitat. Currently, we consider two Population Areas (Sand Spit and South Los Osos) to have a high level of resiliency, three Population Areas (North Morro Bay, East Los Osos, Downtown Los Osos) to have moderate resiliency, and one Population Area (Morro Bay) to have a low resiliency. It is not likely that loss of this Population Area would affect species representation across the remaining portion of range as current numbers of individuals in this Population Area are very low, and it is generally isolated from the other five Population Areas. Regarding redundancy, we consider those Population Areas with low or moderate resiliencies to be at a greater risk of local extirpation, which has the potential to decrease overall species redundancy.

Our analyses indicate that the current viability of the Morro shoulderband snail has likely improved to some degree since the time of listing due to implementation of conservation efforts, predominantly through protection of habitat through conservation easement, deed restriction, or management for conservation purposes. Additionally, there are substantially more individuals than thought at the time of listing.

Overall, we anticipate that the viability of the species will decline in the future under two of the three scenarios: Status Quo and Limited Conservation. Under the Status Quo scenario, resiliency of the North Morro Bay and Morro Bay Population Areas would remain moderate and low, respectively, while all other Population Areas would be expected to experience decreased resiliency. Under the Status Quo scenario, half of the Population Areas are projected to be in the low resiliency category. Under the Limited Conservation scenario, resilience of the North Morro Bay, Morro Bay, and South Los Osos Population Areas would remain unchanged. The South Los Osos Population Area is where the majority of the conservation strategy for the LOHCP would occur. Only in the Major Conservation scenario does resiliency remain the same or improve, with the exception of Downtown Los Osos, where we anticipate the majority of development would occur as part of LOHCP implementation. For redundancy, an overall decrease in the

condition of Population Areas in two of the three future scenarios suggests those low-condition populations are at risk of being lost and, therefore, that there could be decreased species redundancy. Against a backdrop of increased climate change effects expected to result in prolonged and/or more intensive droughts, increased wildfire frequency and/or intensity, and localized flooding events, risk of extirpation could increase with decreased species redundancy.

Determination of Morro Shoulderband Snail Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We evaluated threats to the species and assessed the cumulative effect of the threats under the section 4(a)(1) factors. This included an examination of the best scientific and commercial information available regarding the past, present, and future threats faced by the species, as well as information presented in the 2006 5-year review (Service 2006, entire), additional information available since it was completed, and other available published and unpublished information. We also consulted with species experts and land management staff who are actively managing habitat for the conservation of the Morro shoulderband snail.

The primary risk factors affecting Morro shoulderband snails are the present and threatened modification or destruction of its habitat from development (Factor A), wildfire (Factor A), and invasive species (Factor A), as well as effects to its life cycle from changing climate conditions (Factor E). We also considered the threat of collection (Factor B) and examined whether there were any existing regulatory mechanisms (Factor D) addressing ongoing threats. Additional threats to the species include agriculture and vegetation management (Factor A) and predation (Factor C) (Service 2019, pp. 21–45).

Threats influencing the viability of Morro shoulderband snail populations at the time of listing were urban development, off-road vehicle activity, nonnative vegetation (referred to as invasive species in this proposed rule), parasitoids (an insect whose larvae live as parasites that eventually kill their hosts), and competition from brown garden snails, all of which were exacerbated by effects associated with small population size and drought conditions (59 FR 64613, December 15, 1994). Since the time of listing, we have determined that some of these threats are no longer affecting the species, particularly off-road vehicle activity, brown garden snails, parasitoids, and controlled burns (Service 2006, pp. 11–15). Our current analysis indicates that the remaining threats identified at the time of listing have been reduced in magnitude, and that overall the level of impacts to Morro shoulderband snail and its habitat that placed the species in danger of extinction in 1994 have been substantially reduced. These reductions have occurred predominantly because of significant protection of lands at risk of development and surveys indicating that population numbers now occur in the thousands rather than the hundreds. However, threats are still impacting the species and its habitat, and new threats have been identified since the time of listing.

Of the factors identified above, habitat loss and degradation from fragmentation associated with development and invasive plant species (Factor A), wildfire (Factor A), and effects to the Morro shoulderband snail life cycle from changing climate conditions (Factor E) are the most significant threats to the species currently and into the foreseeable future. Conservation actions have decreased the magnitude of impacts from nonnative invasive plant species; however, degradation of native habitats by these species is ongoing. Apart from the protections afforded by the Act, no regulatory mechanisms are addressing the threats impacting the species and its habitat.

We considered plausible future conditions for the Morro shoulderband snail to evaluate the status of the species into the future. Under the status quo, the species would lose resiliency due to continued threats of habitat loss, decreasing habitat quality due to invasive species and drought, and increased wildfire frequency and intensity. These effects will increase into the future, putting some Population Areas at risk of extirpation. Major conservation efforts, including implementation of the Los Osos Habitat Conservation Plan conservation program, active management within currently protected but generally unmanaged lands throughout the distribution of the species, and additional habitat protection through acquisition and subsequent management, could help ameliorate some of these threats in the future; however, this level of conservation is not guaranteed to be implemented.

After our review and analysis of threats as they relate to the five statutory factors, we find that this information does not indicate that these threats are affecting individual populations of Morro shoulderband snail or the species as a whole across its range to the extent that they currently are of sufficient imminence, scope, or magnitude to rise to the level that the species is presently in danger of extinction throughout all of its range. However, while numbers of individuals across the majority of its range are greater now than at the time of listing, the species remains negatively affected by continued and future threats and inadequate resource needs across much of its range.

The best available information indicates there are continued population- and range-wide-level impacts to Morro shoulderband snails despite beneficial conservation efforts in several of the Population Areas that have reduced the magnitude of development. Specifically, Morro shoulderband snail populations across the range continue to be negatively affected by effects of development and invasive nonnative plant species, though at a lower level than at the time of listing. However, in the foreseeable future, available information also indicates increasing temperatures and reductions in the amount of annual rainfall associated with climate change will likely result in prolonged drought conditions that negatively influence Morro shoulderband snail abundance in the future, along with increasing frequency and intensity of wildfires. These effects will combine with the ongoing low-grade impacts of development and invasive plants such that the species is likely to become endangered in the foreseeable future.

Thus, after assessing the best available information, we determine that the Morro shoulderband snail is not

currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future, throughout all of its range.

Status Throughout a Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Everson*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and, (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the Morro shoulderband snail, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

For the Morro shoulderband snail, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Development; invasive species; wildfire; climate change; collection; agriculture and vegetation management; and predation; including cumulative effects. Threats do occur at different magnitudes across the range of the Morro shoulderband snail. For example, the East Los Osos and Downtown Los Osos population areas are at higher risk of development than other areas. Other population areas are at higher risk of fire, such as South Los Osos and Sand Spit. However, there is no population area with a significantly higher magnitude of threats than in other areas, and the magnitude of effects in those areas is not such that the species is likely to become endangered in the foreseeable future. Thus, we found no concentration of threats in any portion of the Morro shoulderband snail's range at a biologically meaningful scale. Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Morro shoulderband snail meets the definition of a threatened species. Therefore, we propose to reclassify the Morro shoulderband snail as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, the second sentence of section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.'' Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to us when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (*see State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the Morro shoulderband snail's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Morro shoulderband snail. As discussed under Summary of Biological Status and Threats, we have concluded that the Morro shoulderband snail is likely to become in danger of extinction within the foreseeable future primarily due to the ongoing impacts of development and invasive plants combined with projected impacts from climate change and increasing frequency and severity of wildfire. The provisions of this proposed 4(d) rule would promote

conservation of the Morro shoulderband snail by encouraging management of the landscape in ways that meet both land management considerations and the conservation needs of the Morro shoulderband snail. The provisions of this rule are one of many tools that we would use to promote the conservation of the Morro shoulderband snail. This proposed 4(d) rule would apply only if and when the Service makes final the listing of the Morro shoulderband snail as a threatened species.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would prohibit all acts described under section 9(a)(1) of the Act, except take resulting from the activities listed below when conducted within habitats occupied by the Morro shoulderband snail. This proposed rule to reclassify the Morro shoulderband snail as a threatened species discusses take of individuals through removal or degradation of native habitat as one of the reasons for its decline. It also discusses the effects of more frequent or increased intensity of wildfire events associated with climate change. The specific focus of the exceptions to this proposed 4(d) rule is take directly associated with activities related to native habitat restoration and fire hazard reduction activities occurring within the range of the Morro shoulderband snail.

This proposed 4(d) rule outlines exemptions from the prohibitions of section 9(a)(1) of the Act. These include habitat restoration activities in disturbed or degraded native scrub and chaparral habitats throughout the estimated 2,638-ha (6,520-ac) range of the Morro shoulderband snail and specific fire hazard reduction activities within the estimated range of the species.

Habitat restoration activities improve the condition and habitat suitability for the Morro shoulderband snail and other constituent scrub and chaparral species. Habitat within the range of the species has been subject to degradation that has reduced its suitability for Morro shoulderband snail. This degradation is the result of invasion by nonnative plant species, particularly the perennial veldt grass (*Ehrharta calycina*), that occurs after clearing of native plant communities or on unmanaged lands post-fire. Perennial veldt grass and other nonnative grass species can serve as ladder fuels and convey fires originating in the wildland–urban interface into the native scrub and chaparral communities that surround the community of Los Osos. Community concern over the frequency and intensity of wildfire is increasing every year with the increased frequency of catastrophic wildfire events in California. Widespread wildfires within the range of Morro shoulderband snail could result in local extirpations of populations/occurrences of the Morro shoulderband snail and reduce or eliminate the ability of the species to recolonize recovering habitat post-fire, even with management of post-wildfire areas.

This proposed 4(d) rule would exempt from the prohibitions in section 9(a)(1) of the Act incidental take resulting from any of the following activities when conducted within the range of the Morro shoulderband snail:

(1) Native habitat restoration activities, inclusive of invasive and/or nonnative species removal, conducted by a conservation organization (*e.g.,* the California Native Plant Society, Audubon Society, the Land Conservancy of San Luis Obispo County) pursuant to a Service-approved management or restoration plan.

(2) Fire hazard reduction activities implemented by the California Department of Forestry and Fire Protection (CALFIRE) in accordance with a Service-approved plan (such as the Los Osos Community Wildfire Protection Plan (CWPP)) within the range of the Morro shoulderband snail.

Fire hazard reduction activities implemented by CALFIRE and conducted in accordance with a Service-approved plan, like the Los Osos CWPP, on legal parcels or other non-Federal land within the range of the species would be exempted from take prohibitions of section 9(a)(1) of the Act. The CWPP was developed by the San Luis Obispo County Community Fire Safe Council with input from the Service and identifies areas that would receive a range of hazard reduction treatments within and adjacent to the community of Los Osos. Anticipated treatments include removal of downed, dead, or diseased vegetation, creation of shaded fuel breaks, and mowing of nonnative grassland. The CWPP includes measures to reduce the amount and form of take of Morro shoulderband snails that may be present in the treatment areas. We anticipate that these fire hazard reduction activities will have short-term effects on the Morro shoulderband snail. Implementation of the CWPP fire hazard reduction activities would reduce the risk of catastrophic wildfires, which could result in local extirpations of Morro shoulderband snail occurrences/populations.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, as set forth at 17.31(b), any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the Morro shoulderband snail that may result in otherwise prohibited take without additional authorization.

This proposed 4(d) rule would enhance conservation of the Morro shoulderband snail by allowing activities that would contribute to the recovery of the species (restoration activities) or minimize the risks of wildfire that could extirpate populations of Morro shoulderband snail (fire hazard reduction activities). We expect that take of individuals would be predominantly in the form of capture (and moving out of harm's way) of individuals identified during preactivity surveys; however, take in the form of accidental injury or mortality would also be exempted.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the Morro shoulderband snail. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested).

Effects of This Proposed Rule

This proposed rule would revise 50 CFR 17.11(h) to reclassify the Morro shoulderband snail from an endangered species to a threatened species on the

Federal List of Endangered and Threatened Wildlife. This reclassification does not substantially change the protection afforded to this species under the Act. Anyone taking, attempting to take, or otherwise possessing this species, or part thereof, in violation of section 9 of the Act or its implementing regulations, with the exceptions as outlined above, is subject to a penalty under section 11 of the Act. Pursuant to section 7 of the Act, Federal agencies must still ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of Morro shoulderband snail. This proposed rule would not affect the critical habitat designation for the Morro shoulderband snail at 50 CFR 17.95(f).

This proposed 4(d) rule only addresses Federal Endangered Species Act requirements and would not change any prohibitions provided for by State law. As explained above, the provisions included in this proposed 4(d) rule are advisable to provide for the conservation of the Morro shoulderband snail. Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Morro shoulderband snail.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us with revisions to this proposed rule, your comments should be as specific as possible. For example, you should identify the sections or paragraphs that are unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

It is our determination that we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons supporting this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2019–0025, or upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this proposed rule is the Ventura Fish and Wildlife Office, Ventura, California.

Lists of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, under SNAILS, by revising the entry for ''Snail, Morro shoulderband (=Banded dune)'' to read as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* * *
Snails				
*	*	*	*	* * *
Snail, Morro shoulderband.	*Helminthoglypta walkeriana.*	Wherever found	T	59 FR 64613, 12/15/1994; [**Federal Register** citation when published as a final rule]; 50 CFR 17.45(b);[4d] 50 CFR 17.95(f).[CH]
*	*	*	*	* * *

■ 3. Revise § 17.45 to read as follows:

§ 17.45 Special rules—snails and clams.

(a) [Reserved]

(b) Morro shoulderband snail (*Helminthoglypta walkeriana*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Morro shoulderband snail. Except as provided under paragraph (b)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b).

(ii) Take, as set forth at § 17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e).

(v) Sale or offer for sale, as set forth at § 17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Native habitat restoration activities, inclusive of invasive and/or nonnative species removal, conducted by a conservation organization pursuant to a Service-approved management or restoration plan.

(B) Fire-hazard reduction activities implemented by the California Department of Forestry and Fire Protection in accordance with a Service-approved plan within the range of the Morro shoulderband snail.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–15175 Filed 7–23–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 200706–0180]

RIN 0648–BJ47

Take of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seabird Research Activities in Central California

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from Point Blue Conservation Science (Point Blue) for authorization to take marine mammals incidental to seabird research activities in central California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 24, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0076, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0076,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Amy Fowler, 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:

Availability

A copy of Point Blue's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to Point Blue's seabird research activities in central California.

We received an application from Point Blue requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to visual disturbance of pinnipeds during research activities and use of research equipment. Please see Background below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce 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 for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the *Proposed Mitigation* section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent Letters of Authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding Point Blue's seabird research activities. These measures include:

- Required implementation of mitigation to minimize impact to pinnipeds including several measures to approach haulouts cautiously to minimize disturbance, and avoiding surveying when pups are present.
- Required monitoring of the research areas to detect the presence of marine mammals before initiating surveys.

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, regulations are issued, and notice is provided to the public.

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 a proposed rule (and subsequent LOAs)) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations (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 rule qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this proposed rule prior to concluding our NEPA process or making a final decision on the request.

Summary of Request

On September 17, 2019, NMFS received a request from Point Blue for a proposed rule and LOA to take marine mammals incidental to seabird research activities on the central California coast. We determined the application was adequate and complete on November 26, 2019. Point Blue's request is for take of a small number of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina richardii*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus philippii townsendi*), and Steller sea lions (*Eumetopias jubatus*), by Level B harassment only. Neither Point Blue nor NMFS expects serious injury or mortality, or Level A harassment, to result from this activity.

NMFS has previously issued ten Incidental Harassment Authorizations (IHAs) to Point Blue for similar work from 2006 through 2020 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012; 78 FR 66686, November 6, 2013; 80 FR 80321, December 24, 2015; 81 FR 34978, June 1, 2016; 82 FR 31759, July 7, 2017; 83 FR 31372, July 5, 2018; 85 FR 9740, February 20, 2020). Point Blue 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 *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* and *Estimated Take* sections.

Description of Proposed Activity

Overview

Point Blue, along with their research partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore have been conducting seabird research in central California for over 30 years. This research is conducted under cooperative agreements with the U.S. Fish and Wildlife Service (USFWS) in consultation with the Gulf of the Farallones National Marine Sanctuary. Point Blue conducts research activities on Southeast Farallon Island (SEFI), Año Nuevo Island (ANI), and Point Reyes National Seashore (PRNS). Research activities include monitoring and censusing seabird colonies, observing seabird nesting habitat, restoring nesting burrows, and resupplying a field station at SEFI. Research is conducted throughout the year at each of the research sites. Researchers accessing and conducting research activities on the sites may occasionally cause behavioral disturbance (or Level B harassment) of six pinniped species. Point Blue expects that the disturbance to pinnipeds from the research activities will be minimal and will be limited to Level B harassment.

Dates and Duration

Point Blue's research is conducted throughout the year. At SEFI, seabird monitoring sites are visited 1–3 times per day for a maximum of 500 visits per year. Boat landings to re-supply the field station, lasting 1–3 hours, are conducted once every two weeks. At ANI, research is conducted approximately once a week from April-August, with occasional intermittent visits made during the rest of the year. The maximum number of visits per year would be 20. Research at PRNS is conducted year round, with an emphasis during the seabird nesting season, and with occasional intermittent visits the rest of the year. The maximum number of visits per year is 20. A component of the seabird research involves habitat restoration and monitoring which requires sporadic visits from September-November, the time period between the seabird breeding season and the elephant seal pupping season.

Specific Geographic Region

Point Blue will conduct their research activities within the vicinity of pinniped haul-out sites in the following locations:

- *South Farallon Islands:* The South Farallon Islands consist of SEFI, located at 37°41′54.32″ N; 123°0′8.33″ W, and West End Island. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers (km^2)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, California, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary;
- *Año Nuevo Island:* ANI is located at 37°6′29.25″ N; 122°20′12.20″ W, one-quarter mile (402 meters m) offshore of Año Nuevo Point in San Mateo County, California. The island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area; and
- *Point Reyes National Seashore:* PRNS is approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary.

Detailed Description of Specific Activity

Southeast Farallon Islands

Point Blue has conducted year round wildlife research and monitoring activities at SEFI, part of the Farallon National Wildlife Refuge, since 1968. This work is conducted through a collaborative agreement with the USFWS. Research focuses on marine

mammals and seabirds and includes procedures involved in maintaining the SEFI field station. These activities may involve the incidental take of marine mammals.

Seabird research activities involve observational and marking (*i.e.,* netting and banding for capture-mark-recapture) studies of breeding seabirds. Occasionally researchers may travel to coastal areas of the island to conduct observational seabird research, which includes viewing breeding seabirds from an observation blind or censusing shorebirds, and usually involves one or two observers. Access to the refuge involves landing in small boats, 14–18 foot (ft) open motorboats, which are hoisted onto the island using a derrick system.

Most intertidal areas of the island, where marine mammals are present, are rarely visited in seabird research. Most potential for incidental take will occur at the island's two landings, North Landing and East Landing. These sites are visited by researchers 1–3 times per day for a maximum of 500 visits per year. At both landings, research stations are located more than 50 ft above any pinnipeds that may be present. Most visits to these areas are brief (~15 minutes), though seabird observers are present for 2–5 hours daily at North Landing from early April to early August each year to conduct observational studies on breeding common murres (*Uria aalge*). Boat landings to re-supply the field station, lasting 1–3 hours, are conducted once every 2 weeks at either North Landing or East Landing. Activities involve launching of the boat with one operator, with 2–4 other researchers assisting with the operations from land. At East Landing, the primary landing site, all personnel assisting with the landing stay on the loading platform 30 ft above the water. At North Landing, loading operations occur at the water level in the intertidal zone.

Año Nuevo Island

Point Blue has also conducted seabird research and monitoring activities on ANI, part of the Año Nuevo State Reserve, since 1992. Collaborations with Oikonos Ecosystem Knowledge began in 2001 to research seabird burrow nesting habitat quality and restoration. All work is conducted through a collaborative agreement with California State Parks. Research at ANI is conducted year-round, with up to 20 visits per year. The island is accessed by a 12 ft Zodiac boat. Non-breeding pinnipeds may occasionally be present on the small beach in the center of the island where the boat is landed. There are usually 2–3 researchers involved in island visits. Most intertidal areas of the island where marine mammals are present are not ever visited during seabird research, except at the landing beach. Seabird nest boxes are located just north of the landing beach, up on the island's terrace, over 50 ft from hauled out pinnipeds. The landing beach is visited upon arrival and departure during the weekly visit, and seabird nest boxes are checked one time that day. Landings and visits to nest boxes are brief (~15 minutes).

Point Reyes National Seashore

Research at PRNS is conducted year-round, with up to 20 visits per year. The National Park Service (NPS) conducts research, resource management and routine maintenance services at PRNS. This involves both marine mammal research and seabird research and includes maintaining the facilities around the seashore. Habitat restoration of the seashore occurs and includes restoration and removal of non-native invasive plants and coastal dune habitat. Non-native plant removal is timed to avoid the breeding seasons of pinnipeds; however, on occasion non-breeding animals may be present at various beaches throughout the year.

Research along the seashore includes monitoring seabird breeding and roosting colonies. Seabird monitoring usually involves one or two observers. Surveys are conducted using 14–22-ft open motorboats that survey along the shoreline. Intermittent visits to areas of PRNS where pinniped takes may occur are also conducted for research on other species such as seabirds, sharks, and subtidal mapping, as well as resource management activities such as non-native plant management and intertidal monitoring.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see the *Proposed Mitigation* and *Proposed Monitoring and Reporting* sections).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence at survey sites in California, 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 the 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 Pacific and Alaska Marine Mammal SARs (Carretta *et al.* 2019a; Muto *et al.,* 2019a) and draft U.S. 2019 Pacific and Alaska Marine Mammal SARs (Caretta *et al.,* 2019b; Muto *et al.,* 2019b). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 and draft 2019 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE STUDY AREAS

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 Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-/-; N	257,606 (n/a; 233,515; 2014)	14,011	>320
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-/-; N	43,201 (n/a; 43,201; 2017)	2,592	113
Northern fur seal	*Callorhinus ursinus*	California	-/-; N	14,050 (n/a; 7,524; 2013)	451	>0.8
		Eastern Pacific	-/D; Y	620,660 (0.2, 525,333, 2016)	11,295	399
Guadalupe fur seal	*Arctocephalus philippii townsendi.*	Mexico to California	T/D; Y	34,187 (n/a; 31,019; 2013)	1,062	>1.2
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	California	-/-; N	30,968 (n/a; 27,348; 2012)	1,641	43
Northern elephant seal	*Mirounga angustirostris*	California	-/-; N	179,000 (n/a; 81,368; 2010)	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; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

3—These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strikes). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All species that could potentially occur in the proposed survey areas are included in Table 1. Below, we describe all six species that temporally and spatially co-occur with the activity, as well as the degree that take is reasonably likely to occur, to the extent that we have proposed authorizing it. The southern sea otter (*Enhydra lutris nereis*) may be found at SEFI and ANI. However, they are managed by the USFWS and are not considered further in this document.

California Sea Lions

California sea lion breeding areas are on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.,* 2017). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between four and 10 months of age (NMML 2010).

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.

On the Farallon Islands, California sea lions haul out in many intertidal areas year round, fluctuating from several hundred to several thousand animals. California sea lions at PRNS haul out at only a few locations, but will occur on human structures such as boat ramps. The annual population averages around 300 to 500 during the fall through spring months, although on occasion, several thousand sea lions can arrive depending upon local prey resources (S. Allen, unpublished data). On ANI, California sea lions may haul out at one of eight beach areas on the perimeter of the island. The island's average population ranges from 4,000 to 9,500 animals (M. Lowry, unpublished data).

Elevated numbers of strandings of California sea lion pups occurred in Southern California beginning in January 2013, and NMFS declared an Unusual Mortality Event (UME). The UME was confined to pup and yearling California sea lions, many of which were emaciated, dehydrated, and underweight for their age. A change in the availability of sea lion prey, especially sardines, a high value food source for nursing mothers, was a likely contributor to the large number of strandings. Sardine spawning grounds shifted further offshore in 2012 and 2013, and, while other prey were available (market squid and rockfish), these may not have provided adequate nutrition in the milk of sea lion mothers supporting pups, or for newly-weaned pups foraging on their own. Although the pups showed signs of some viruses and infections, findings indicated that this event was not caused by disease, but rather by the lack of high quality, close-by food sources for nursing mothers. Current evidence does not indicate that this UME was caused by a single infectious agent, though a variety of disease-causing bacteria and viruses were found in samples from sea lion pups. Investigating and identifying the cause of this UME is a true public-private effort with many collaborators. The investigative team examined multiple potential explanations for the high numbers of malnourished California sea lion pups observed on the island rookeries and stranded on the mainland in 2013. For more information, see *https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2017-california-sea-lion-unusual-mortality-event-california.*

Steller Sea Lion

Steller sea lions consist of two distinct population segments (DPSs): The western and eastern DPSs divided at 144° W longitude (Cape Suckling, Alaska). The western segment of Steller sea lions inhabits central and western Gulf of Alaska, Aleutian Islands, as well as coastal waters, and breed in Asia (*e.g.,* Japan and Russia). The eastern DPS includes animals born east of Cape Suckling, AK (144° W), and includes sea lions living in southeast Alaska, British Columbia, Washington, Oregon, and California.

Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries

by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS, 1995; Trujillo *et al.,* 2004; Hoffman *et al.,* 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al.,* 2007).

An estimated 50–150 Steller sea lions are located along the Farallon Islands while 400–600 may be found on ANI (Point Blue, unpublished data; Lowry, unpublished data). Steller sea lions are not typically present at PRNS (NPS, unpublished data). Overall, counts of non-pups at trend sites in California and Oregon have been relatively stable or increasing slowly since the 1980s (Muto *et al.,* 2017). SEFI is one of two breeding colonies at the southern end of the Steller sea lion's range. On the Farallon and Año Nuevo Islands, Steller sea lion breeding colonies are located in closed areas where researchers never visit, eliminating any risk of disturbing breeding animals.

Northern Fur Seal

The northern fur seal is endemic to the North Pacific Ocean and occurs from southern California to the Bering Sea, Sea of Okhotsk, and Sea of Japan (Jefferson *et al.,* 2015). Two stocks are recognized in U.S. waters: the Eastern North Pacific and the California stocks. The Eastern Pacific stock ranges from southern California during winter to the Pribilof Islands and Bogoslof Island in the Bering Sea during summer (Carretta *et al.,* 2018; Muto *et al.,* 2018). The California stock originated with immigrants from the Pribilof Islands and Russian populations that recolonized San Miguel Island during the late 1950s or early 1960s after northern fur seals were extirpated from California in the 1700s and 1800s (DeLong 1982). Most northern fur seals at Point Blue research sites are expected to be from the California stock, though some may be from the Eastern North Pacific stock, as adult females and pups from the Pribilof Islands move through the Aleutian Islands into waters off of Oregon and California (Muto *et al.,* 2019b).

The northern fur seal spends ~90 percent of its time at sea, typically in areas of upwelling along the continental slopes and over seamounts (Gentry 1981). The remainder of its life is spent on or near rookery islands or haulouts. While at sea, northern fur seals usually occur singly or in pairs, although larger groups can form in waters rich with prey (Antonelis and Fiscus 1980; Gentry 1981). Northern fur seals dive to relatively shallow depths to feed: 100–200 m for females, and <400 m for males (Gentry 2009). Tagged adult female fur seals were shown to remain within 200 km of the shelf break (Pelland *et al.* 2014).

Northern fur seals likely numbered in excess of 100,000 animals at the Farallon Islands before being locally extirpated by sealers in the 1800's (Townsend 1931; Scheffer and Kraus 1964). After more than a 150-year absence, northern fur seals recolonized the Farallon Islands in the 1970's and the first confirmed pup was born in 1996 (Pyle *et al.,* 2001). The Farallon Islands continue to be a breeding site for northern fur seals, with over 1,000 pups born each season (Point Blue, unpublished data). Fur seals in the Farallon Islands typically begin pupping in mid-July with peak population and pup production in late-August to early-September.

Guadalupe Fur Seal

Guadalupe fur seals were once plentiful on the California coast, ranging from the Gulf of the Farallones near San Francisco, to the Revillagigedo Islands, Mexico (Aurioles-Gamboa *et al.,* 1999), but they were over-harvested in the 19th century to near extinction. After being protected, the population grew slowly; mature individuals of the species were observed occasionally in the Southern California Bight starting in the 1960s (Stewart *et al.,* 1993), and, in 1997, a female and pup were observed on San Miguel Island (Melin & DeLong, 1999). Since 2008, individual adult females, subadult males, and between one and three pups have been observed annually on San Miguel Island (Caretta *et al.,* 2017).

During the summer breeding season, most adults occur at rookeries in Mexico (Caretta *et al.,* 2019; Norris 2017 in U.S. Navy 2019). Following the breeding season, adult males tend to move northward to forage. Females have been observed feeding south of Guadalupe Island, making an average round trip of 2,375 km (Ronald and Gots 2003). Several rehabilitated Guadalupe fur seals that were satellite tagged and released in central California traveled as far north as British Columbia (Norris *et al.,* 2015; Norris 2017 in U.S. Navy 2019). Guadalupe fur seals are not typically observed at Point Blue research sites, but they have occasionally been seen at the Farallon Islands in the last decade.

Increased strandings of Guadalupe fur seals have occurred along the entire coast of California. Guadalupe fur seal strandings began in January 2015 and were eight times higher than the historical average. Strandings have continued since 2015 and have remained well above average through 2019. Strandings are seasonal and generally peak in April through June of each year. Strandings in Oregon and Washington became elevated starting in 2019 and have continued to present. Strandings in these two states in 2019 are five times higher than the historical average. Guadalupe fur seals have stranded alive and dead. Those stranding are mostly weaned pups and juveniles (1–2 years old). The majority of stranded animals showed signs of malnutrition with secondary bacterial and parasitic infections. NMFS has declared a UME for Guadalupe fur seals along the entire U.S. West Coast; the UME is ongoing and NMFS is continuing to investigate the cause(s). For additional information on the UME, see *https://www.fisheries.noaa.gov/national/marine-life-distress/2015-2020-guadalupe-fur-seal-unusual-mortality-event-california.*

Northern Elephant Seal

Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska to as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 1,000 to 2,500 ft (330–800 m) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

The northern elephant seal breeding population is distributed from central Baja California, Mexico to the Point Reyes Peninsula in northern California. Along this coastline, there are 13 major breeding colonies. Northern elephant seals breed and give birth primarily on offshore islands (Stewart *et al.,* 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed farther south, south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993).

In mid-December, adult males begin arriving at rookeries, closely followed by pregnant females on the verge of giving birth. Females give birth to a single pup, generally in late December or January (Le Boeuf and Laws, 1994) and nurse their pups for approximately four weeks (Reiter *et al.,* 1991). Upon pup weaning, females mate with an adult male and then depart the islands. The last adult breeders depart the islands in mid-March. The spring peak of elephant seals on the rookery occurs

in April, when females and immature seals (approximately one to four years old) arrive at the colony to molt (a one-month process) (USFWS 2013). The year's new pups remain on the island throughout both of these peaks, generally leaving by the end of April (USFWS 2013). The lowest numbers of elephant seals present at rookeries occurs during June, July, and August, when sub-adult and adult males molt. Another peak number of young seals returns to the rookery for a haul-out period in October, and at that time some individuals undergo partial molt (Le Boeuf and Laws, 1994).

Northern elephant seals are present on the islands and in the waters surrounding the South Farallones year-round for either breeding or molting; however, they are more abundant during breeding and peak molting seasons (Le Boeuf and Laws, 1994; Sydeman and Allen, 1999). Northern elephant seals began recolonizing the South Farallon Islands in the early 1970s (Stewart *et al.,* 1994) at which time the colony grew rapidly. Point Blue's average monthly counts of elephant seals at SEFI from 2000 to 2009 ranged from 20 individuals in July to nearly 500 individuals in November (USFWS 2013). During breeding season, the population at ANI ranges from 900 to 1,000 adults, while another ~2,000 adults are found at PRNS (Mark Lowry, unpublished data; NPS, unpublished data).

Pacific Harbor Seal

Pacific harbor seals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. They are divided into two subspecies: *P.* v. *stejnegeri* in the western North Pacific, near Japan, and *P.* v. *richardii* in the northeast Pacific Ocean. The latter subspecies occurs along the California coast. The California stock of harbor seals ranges from Mexico to the Oregon-California border. In California, 400–600 harbor seal haul-out sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.,* 2008).

Harbor seals mate at sea, and females give birth during the spring and summer, although the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July.

On the Farallon Islands, approximately 40 to 120 Pacific harbor seals haul out in the intertidal areas (Point Blue, unpublished data). Harbor seals at PRNS haul out at nine locations with an annual population of up to 4,000 animals (M. Lowry, unpublished data). On ANI, harbor seals may haul out at one of eight beach areas on the perimeter of the island, and the island's average population ranges from 100 to 150 animals (M. Lowry, unpublished data).

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.

Visual and acoustic stimuli generated by the appearance of researchers and motorboat operations may have the potential to cause Level B harassment of pinnipeds hauled out on SEFI, ANI, or PRNS. This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.,* personnel presence and motorboats) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take. This section provides background information on potential effects of these activities. For a discussion of the manner in which the mitigation measures will be implemented, and how the mitigation measures will shape the anticipated impacts from this specific activity, see the *Proposed Mitigation* section below.

The appearance of researchers may have the potential to cause Level B behavioral harassment of any pinnipeds hauled out at research sites. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of researchers (*e.g.,* turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that flee some distance or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking (see below). Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Reactions to human presence, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Southall *et al.,* 2007; Weilgart 2007). These behavioral reactions from marine mammals are often shown 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 responses or aggressive behavior; avoidance of areas; and/or flight responses (*e.g.,* pinnipeds flushing into the water from haulouts or rookeries). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart, 2007). Numerous studies have shown that human activity can flush harbor seals off haul-out sites (Allen *et al.,* 1985; Calambokidis *et al.,* 1991; Suryan and Harvey, 1999). The Hawaiian monk seal (*Neomonachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon 1972). In one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon 1962).

In cases where vessels actively approached marine mammals (*e.g.,* whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Acevedo, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval, disruption of normal social behaviors (Lusseau 2003; 2006), and the

shift of behavioral activities that may increase energetic costs (Constantine *et al.,* 2003).

In 1997, Henry and Hammil (2001) conducted a study to measure the impacts of small boats (*i.e.,* kayaks, canoes, motorboats and sailboats) on harbor seal haul-out behavior in Metis Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks, and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high-speed passes. The seal's flight reactions could be linked to a surprise factor by kayaks and canoes, which approach slowly, quietly, and low on the water making them look like predators. However, the authors note that, once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels had only a temporary effect on the haul-out behavior of harbor seals in the Metis Bay area.

In 2004, Acevedo-Gutierrez and Johnson (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haul-out sites on Yellow Island, Washington. The authors estimated the minimum distance between the vessels and the haul-out sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the seven-weekend study, the authors recorded 14 human-related disturbances that were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m) away, respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that, on average, the seals quickly recovered from the disturbances and returned to the haul-out site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007). As a general statement from the available information, pinnipeds exposed to intense (approximately 110 to 120 decibels referenced to 20 microPascals (μPa)) airborne non-pulsed sounds often leave haul-out areas and seek refuge temporarily (minutes to a few hours) in the water (Southall *et al.,* 2007).

The potential for striking marine mammals is a concern with vessel traffic. Typically, the reasons for vessel strikes are fast transit speeds, lack of maneuverability, or not seeing the animal because the boat is so large. Point Blue's researchers will access areas at slow transit speeds in small boats that are easily maneuverable, minimizing any chance of an accidental strike.

There are other ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. They are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. These situations are: (1) Falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of pups by larger animals during a stampede. However, NMFS does not expect any of these scenarios to occur at SEFI, ANI, or PRNS. There is the risk of injury if animals stampede towards shorelines with precipitous relief (*e.g.,* cliffs). Researchers will take precautions, such as moving slowly and staying close to the ground, to ensure that flushes do not result in a stampede of pinnipeds heading to the sea. Point Blue reports that stampedes are extremely rare at their survey locations. Furthermore, no research activities would occur at or near pinniped rookeries. Breeding animals are concentrated in areas where researchers would not visit, so NMFS does not expect mother and pup separation or crushing of pups during flushing. Furthermore, if pups should be present at any Point Blue research sites, researchers will avoid visiting that particular site.

Given the nature of the proposed activities (*i.e.* animal observations from a distance and limited motorboat operations) in conjunction with proposed mitigation measures, NMFS is confident that any anticipated effects would be in the form of behavioral disturbance only. NMFS considers the risk of injury, serious injury, or mortality to marine mammals to be very low.

There are no habitat modifications associated with the proposed activity other than the presence of existing observation blinds by researchers to monitor animals. These blinds disturb only a few square feet of habitat. The presence of the blinds will likely result in a net decrease in disturbance since the researchers will only be visible briefly as they enter and exit the blind. Thus, NMFS does not expect that the proposed activity would have any effects on marine mammal habitat and NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat on SEFI, ANI, or PRNS.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this LOA, and this estimate will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to researchers. Based on the nature of the activity and required mitigation, no Level A harassment, serious injury, or mortality is anticipated or proposed to be authorized. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Marine Mammal Occurrence and Take Calculation and Estimation

Take estimates are based on take reported by Point Blue in the last five years (Table 2). Point Blue's requested annual take was calculated as the maximum annual recorded take for each species over the last five years with a 10 percent increase (to account for potential population growth over the course of the five-year authorization), or the authorized take from the most recent IHA, whichever was greater.

Take of northern fur seals and Guadalupe fur seals has not been authorized in Point Blue's past IHAs. However, the northern fur seal colony in the Farallon Islands is expanding, and northern fur seals are beginning to haul out in areas that are regularly visited by researchers and in areas that are critical for access to the island. There is also some potential for Guadalupe fur seals to be present at the Farallon Islands, though they are not expected to occur as frequently as northern fur seals. Therefore, Point Blue has requested 20 annual takes by Level B harassment of northern fur seals and 5 annual takes by Level B harassment of Guadalupe fur seals, and NMFS proposes to authorize this amount.

TABLE 2—REPORTED TAKE OBSERVATIONS FROM PREVIOUS IHAS, AND REQUESTED ANNUAL TAKES BY LEVEL B HARASSMENT

Species	Reported take observations for all activities					Authorized takes from most recent IHA	Total requested annual takes by Level B harassment
	2014	2015	2016	2017	2018		
California sea lion	10,048	36,417	23,173	22,752	17,487	32,623	40,059
Northern elephant seal	145	175	119	202	85	239	239
Pacific harbor seal	284	292	175	234	229	304	321
Steller sea lion	59	31	32	35	5	43	65
Northern fur seal	0	0	0	0	0	0	20
Guadalupe fur seal	0	0	0	0	0	0	5

TABLE 3—PROPOSED TAKE BY LEVEL B HARASSMENT AND PERCENT OF MMPA STOCK PROPOSED TO BE TAKEN

Species	Stock	Proposed annual take by Level B harassment	Proposed total take by Level B harassment	Percent of Stock [1]
California sea lion	U.S	40,059	200,295	15.55
Northern elephant seal	California breeding	239	1,195	0.13
Pacific harbor seal	California	321	1,605	1.04
Steller sea lion	Eastern U.S.	65	325	0.15
Northern fur seal [2]	California	20	100	0.14
	Eastern Pacific			<0.01
Guadalupe fur seal	Mexico to California	5	25	0.01

[1] Reflects annual take number.
[2] As either stock may occur in the project area, for the purposes of calculating the percentage of the stock impacted, the take is being analyzed as if all proposed takes occurred within each stock.

Proposed Mitigation

In order to issue regulations and an LOA under Section 101(a)(5)(A) 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 and impact on operations.

To reduce the potential for disturbance from acoustic and visual stimuli associated with survey activities, Point Blue will implement the following mitigation measures:

- Slow approach to beaches for boat landings to avoid stampede, provide animals opportunity to enter water, and avoid vessel strikes;
- Observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* if pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals);
- Avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds);
- Avoid visits to sites when pups are present or when species for which

authorization has not been granted are present;

• Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators;

• Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds;

• Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds;

• Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view; and

• Coordinate research visits to intertidal areas of SEFI (to reduce potential take) and coordinate research activities for ANI to minimize the number of trips to the island.

Based on our evaluation of the applicant's proposed measures, and the proven efficacy and practicability of these mitigation measures in previous Point Blue incidental take authorizations, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue regulations and an LOA for an activity, Section 101(a)(5)(A) 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); and

• Mitigation and monitoring effectiveness.

Point Blue will contribute to the knowledge of pinnipeds in California by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Required monitoring protocols for Point Blue will include the following:

(1) Record of date, time, and location (or closest point of ingress) of each visit to the research site;

(2) Composition of the marine mammals sighted, such as species, gender, and life history stage (*e.g.,* adult, sub-adult, pup);

(3) Information on the numbers (by species) of marine mammals observed during the activities;

(4) Estimated number of marine mammals (by species) that may have been harassed during the activities;

(5) Behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach); and

(6) Information on the weather, including the tidal state and horizontal visibility.

The lead biologist will serve as an observer to record incidental take. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 4. Note that only observations of disturbance noted in Levels 2 and 3 should be recorded as takes.

TABLE 4—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only observations of disturbance Levels 2 and 3 are recorded as takes.

This information will be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1 through December 31 of each year of the authorization. Point Blue will submit annual report data on a calendar year schedule, regardless of the LOA's initiation or expiration dates. This ensures that data from all consecutive months will be collected and, therefore, can be analyzed to estimate authorized take for future incidental take authorizations regardless of the existing authorization's issuance date. Point Blue will submit a draft

monitoring report for the activities to NMFS Office of Protected Resources by April 1 of each year. A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft monitoring report will be considered to be the final report. The final annual report after year five may be included as part of the final report (see below).

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to the NMFS West Coast Regional Office. In the event that personnel discovers an injured or dead marine mammal, Point Blue shall report the incident to the NMFS Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by Point Blue's activities, Point Blue 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 LOA. Point Blue 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.

A draft final report shall be submitted to the NMFS Office of Protected Resources within 60 days after the conclusion of the fifth year. A final report shall be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

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 discussion of our analyses applies to all the species listed in Table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance that would negatively impact an individual animal's fitness, or result in injury, serious injury, or mortality. Although Point Blue's survey activities may disturb marine mammals, NMFS expects those impacts to occur to localized groups of animals at or near survey sites. Behavioral disturbance would be limited to short-term startle responses and localized behavioral changes due to the short duration (ranging from <15 minutes for visits at most locations up to 2–5 hours from April-August at SEFI) of the research activities. At some locations, where resupply activities occur, visits will occur once every two weeks. Minor and brief responses including short-duration startle reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering. These short duration disturbances (in many cases animals will return in 30 minutes or less) will generally allow marine mammals to reoccupy haulouts relatively quickly; therefore, these disturbances would not be anticipated to result in long-term disruption of important behaviors. No surveys will occur at or near rookeries as researchers will have limited access to SEFI, ANI, and PRNS during the pupping season and will not approach sites should pups be observed. Furthermore, breeding animals tend to be concentrated in areas that researchers are not scheduled to visit. Therefore, NMFS does not expect mother and pup separation or crushing of pups during stampedes.

Level B behavioral harassment of pinnipeds may occur during the operation of small motorboats. However, exposure to boats and associated engine noise would be brief and would not occur on a frequent basis. Results from studies demonstrate that pinnipeds generally return to their sites and do not permanently abandon haul-out sites after exposure to motorboats (Henry and Hammil 2001; Johnson and Acevedo-Gutierrez 2007). The chance of a vessel strike is very low due to small boat size and slow transit speeds. Researchers will delay ingress into the landing areas until after the pinnipeds enter the water and will cautiously operate vessels at slow speeds.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality, or Level A harassment, is anticipated or authorized;
- There is no activity near rookeries and researchers will avoid areas where pups are present;
- There is likely to be limited impact from boats due to their small size, maneuverability and the requirement to delay ingress until after hauled out pinnipeds have entered the water;
- No impacts to pinniped habitat are anticipated; and
- Only limited behavioral disturbance in the form of short-duration startle reactions is expected, and mitigation requirements employed by researchers (*e.g.* move slowly, use hushed voices) should further decrease disturbance levels.

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) 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 annual amount of take NMFS proposes to authorize is less than one-third of any stock's best population estimate (Table 3), which NMFS considers to be small relative to stock abundance. In fact, for all species but California sea lions, the annual take by Level B harassment is less than 2 percent of stock abundance. Additionally, these are all likely conservative estimates because we assume all takes are of different individual animals which is likely not the case considering haulout site fidelity in pinnipeds.

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.

Adaptive Management

The regulations governing the take of marine mammals incidental to Point Blue's seabird research activities would contain an adaptive management component.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Point Blue regarding practicability) on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from Point Blue's monitoring from the previous year(s); (2) results from other marine mammal research or studies; and (3) any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

There is one marine mammal species (Guadalupe fur seal) listed under the ESA that is expected to be impacted by the proposed activities. The Permits and Conservation Division has requested initiation of section 7 consultation with the West Coast Region Protected Resources Division Office for the issuance of this LOA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the Point Blue request and the proposed regulations (see ADDRESSES). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Point Blue is the sole entity that would be subject to the requirements in these proposed regulations, and Point Blue is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 219

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: July 8, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITES

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

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart M to part 217 to read as follows:

Subpart M—Taking Marine Mammals Incidental to Seabird Research Activities in Central California

Sec.
217.120 Specified activity and specified geographical region.
217.121 Effective dates.
217.122 Permissible methods of taking.
217.123 Prohibitions.
217.124 Mitigation requirements.
217.125 Requirements for monitoring and reporting.
217.126 Letters of Authorization.
217.127 Renewals and modifications of Letters of Authorization.
217.128—217.129 [Reserved]

§ 217.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Point Blue Conservation Science (Point Blue) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occur incidental to seabird research activities.

(b) The taking of marine mammals by Point Blue may be authorized in a Letter of Authorization (LOA) only if it occurs in California on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore.

§ 217.121 Effective dates.

Regulations in this subpart are effective from January 1, 2021 through December 31, 2025.

§ 217.122 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 217.126, the Holder of the LOA (hereinafter ''Point Blue'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.120(b) by Level B harassment associated with seabird research activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.123 Prohibitions.

Notwithstanding takings contemplated in § 217.120 and authorized by a LOA issued under § 216.106 of this chapter and § 217.126, no person in connection with the activities described in § 217.120 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 217.126;

(b) Take any marine mammal not specified in such LOA;

(c) Take any marine mammal specified in such LOA in any manner other than as specified in § 217.122;

(d) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.124 Mitigation requirements.

When conducting the activities identified in § 217.120(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.126 must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) All persons must slowly approach beaches for boat landings to avoid stampede, provide animals opportunity to enter the water, and avoid vessel strikes.

(2) All persons must observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* if pinnipeds are present, researchers must approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals).

(3) All persons must avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers must keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds).

(4) All persons must avoid visits to sites when pups are present or when species for which authorization has not been granted are present.

(5) All persons must monitor for offshore predators and must not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are observed to be present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the lead biologist determines the area is free of predators based on best professional judgment.

(6) All persons must keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(7) All persons must conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(8) All persons must crawl slowly to access seabird next boxes on Año Nuevo Island if pinnipeds are within view.

(9) Researchers must coordinate research visits to intertidal areas of Southeast Farallon Island and coordinate research activities for Año Nuevo Island to minimize the number of trips to these areas.

(b) [Reserved]

§ 217.125 Requirements for monitoring and reporting.

(a) *Visual monitoring program.* (1) Standard information recorded must include species counts (with age/sex classes noted when possible) of animals present before approaching, numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event.

(2) The lead biologist must serve as an observer to record incidental take.

(3) Information to be recorded must include the following:

(i) The date, time, and location (or closest point of ingress) of each visit to the research site;

(ii) Composition of the marine mammals sighted, such as species, sex, and life history stage (*e.g.,* adult, sub-adult, pup);

(iii) The number (by species) of marine mammals observed during the activities;

(iv) Estimated number of marine mammals (by species) that may have been harassed during the activities, according to a three-point scale of disturbance contained in any LOA issued under § 216.106 of this chapter and § 217.126. Only observations of disturbance Levels 2 and 3 should be recorded as takes;

(v) Behavioral responses or modifications in behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach);

(vi) Information on the weather, including the tidal state and horizontal visibility; and

(vii) If applicable, note the presence of any offshore predators (date, time, number, and species).

(b) *Prohibited Take.* (1) In the event that personnel discovers an injured or dead marine mammal, Point Blue shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS as soon as feasible. If the death or injury was clearly caused by Point Blue's activities, Point Blue

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 LOA. Point Blue must not resume their activities until notified by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(c) *Initial report.* Point Blue must report observations of unusual behaviors, numbers, or distributions of pinnipeds, or of tag-bearing carcasses, to the NMFS West Coast Regional Office.

(d) *Annual report.* (1) A draft annual report covering the period of January 1 through December 31 of each year must be submitted to NMFS Office of Protected Resources by April 1 of each year. The final annual report after year five may be included as part of the final report (see below). The report must include a summary of the information gathered pursuant to the monitoring requirements set forth above and in the LOA.

(2) A final annual report must be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft annual report. If no comments are received from NMFS, the draft annual report will be considered the final report.

(e) *Final report.* (1) A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the fifth year. A final report must be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

§ 217.126 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Point Blue must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Point Blue may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Point Blue must apply for and obtain a modification of the LOA as described in § 217.127.

(e) The LOA shall set forth:

(1) Permissible methods and numbers of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 217.127 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.126 for the activity identified in § 217.120(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS' Office of Protected Resources determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS' Office of Protected Resources may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.126 for the activity identified in § 217.120(a) may be modified by NMFS' Office of Protected Resources under the following circumstances:

(1) *Adaptive management.* NMFS' Office of Protected Resources may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Point Blue regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Point Blue's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS' Office of Protected Resources will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS' Office of Protected Resources determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 217.126, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ § 217.128—217.129 [Reserved]

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Notices

Federal Register

Vol. 85, No. 143

Friday, July 24, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 21, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by August 24, 2020. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: Agricultural Resource Management and Chemical Use Surveys—Substantive Change.

OMB Control Number: 0535–0218.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

Using the Agricultural Resource Management Survey (ARMS) and the Vegetable Chemical Use Survey, NASS collects environmental data which includes cropping practices, fertilizer applications, pesticide usage for weeds, insects, fungus, mold, etc., and the use of various pest management practices. Through cooperative agreements with the Economic Research Service and the Office of Pest Management Policy NASS collects additional data to aid in their research. Additional questions were added to the ARMS III questionnaires to measure the impact the COVID–19 pandemic has had on the farming industry in 2020. Complete listings of the questions added, deleted or changed on each questionnaire version are attached to this submission.

The COVID–19 pandemic has altered the modes of data collection. In previous years, NASS has relied primarily on data collection by personal interviews for the ARMS and Chemical Use Surveys. With social distancing, NASS will incorporate a computer assisted web interview (CAWI) along with a computer assisted telephone interview (CATI). Operators will also be able to complete the questionnaire by mail if they choose to. With these changes to data collection modes NASS will postpone the ARMS II and III corn versions until 2021. The remaining versions will be conducted in 2020.

The overall annual, average sample size for the ARMS and Chemical Use program will remain at 105,051. However, these substantive changes will make a minor adjustment to the number of respondents for these surveys. These changes will result in a net decrease in respondent burden of 1,842 hours and a decrease in number of responses of 3,534 from the currently approved annual average total. A detailed listing of the changes, are attached to the docket submission.

Need and Use of the Information: The Office of Pest Management Policy (OPMP), the Economic Research Service (ERS), universities, and numerous other State and Federal Agencies will be able to better address changes in the farming practices and chemicals used on these crops that have occurred since the original approval of this docket.

Description of Respondents: Farms.

Number of Respondents: 105,051.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 104,934.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–16065 Filed 7–23–20; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 21, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 24, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Cooperative Agricultural Pest Survey.

OMB Control Number: 0579–0010.

Summary of Collection: The Plant Protection Act (7 U.S.C. 3301—*et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and noxious weeds. The Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), along with the States and other agencies, collects and manages data on plant pests, woods, and biological control agents through the Cooperative Agricultural Pest Survey (CAPS). The program allows the States and PPQ to conduct surveys to detect and measure the presence of exotic plant pests and weeds and to input surveillance data into a national computer-based system known as the National Agricultural Plant Information System (NAPIS).

Need and Use of the Information: APHIS collects information using cooperative agreements, pest detection surveys, and a Specimens for Determination form (PPQ Form 391), to predict potential plant pest and noxious weed situations and to promptly detect and respond to the occurrence of new pests and to record the location of those pest incursions that could directly hinder the export of U.S. farm commodities. If the information were not collected, it would seriously impact APHIS' ability to timely assist State personnel, and others involved in agriculture and protection of the environment in order to plan pest control measures, detect new outbreaks, and to determine the threat posed by migratory pests.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 54.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 3,570.

Animal Plant and Health Inspection Service

Title: Swine Health Protection.

OMB Control Number: 0579–0065.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of P.O. 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. Veterinary Services, a program with the Animal and Plant Health Inspection Service (APHIS), is responsible for administering regulations intended to prevent the dissemination of animal diseases within the United States. Garbage is one of the primary media through which numerous infections or communicable diseases of swine are transmitted. Because of the serious threat to the U.S. swine industry, Congress passed Public Law 96–468 ''Swine Health Protection Act'' on October 17, 1980. This law requires USDA to ensure that all garbage is treated prior to its being fed to swine that are intended for interstate or foreign commerce or that substantially affect such commerce. The Act and the regulations will allow only operators of garbage treatment facilities, which meet certain specification to utilize garbage for swine feeding. APHIS will use various forms to collect information.

Need and Use of the Information: APHIS collects information from persons desiring to obtain a permit (license) to operate a facility to treat garbage. Prior to issuance of a license, an inspection will be made of the facility by an authorized representative to determine if it meets all requirements of the regulations. Periodic inspections will be made to determine if licenses are meeting the standards for operation of their approved facilities. Upon receipt of the information from the Animal Health Officials, the information is used by Federal or State animal health personnel to determine whether the waste collector is feeding garbage to swine, whether it is being treated, and whether the feeder is licensed or needs to be licensed.

Description of Respondents: Business or other for profit; State, Local or Tribal Government.

Number of Respondents: 15,150.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,715,545.

Animal and Plant Health Inspection Service

Title: Importation of Live Swine (from Certain Regions), Pork, and Pork Products.

OMB Control Number: 0579–0230.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The regulations under which the Animal and Plant Health Inspection Service (APHIS) conducts disease prevention activities are contained in Title 9, Chapter 1, Subchapter D, Part 94. These regulations place certain restrictions on the importation of swine, pork, and pork products into the United States. Regulations regarding other animal products and byproducts can be found at 95 and 112.

Need and Use of the Information: APHIS will collect information to ensure regulatory compliance for mitigation of classical swine fever (CSF) from imports of swine (from certain regions), pork, and pork products into the United States. To ensure this the regulations include information collection activities such as certification for importation of pork or pork products; application of seal; location and reason for breaking seal and application of new seal; termination of agreement; request for approval of defrost facility; request hearing for denial or approval of defrost facility; application for import of small amounts of pork or pork products; cooperative service agreement; notification of Customs and Border Protection inspectors for pork from specific regions; recordkeeping requirements for certificates; certificates for meat processed in tubes; certification for importation of hams; agreement for processing procedures; identification procedures; recordkeeping for processing origin of hams; and program statements.

If this information were collected less frequently or not collected at all, the

United States would be at increased risk for the introduction of rinderpest, FMD, SF, CSF and SVD. This would cause serious economic consequences to U.S. Agricultural exports and several U.S. livestock industries and have potentially serious health consequences for U.S. livestock.

Description of Respondents: Full-time, salaried veterinary officers employed by the governments of Brazil, Chile, and Mexico; industry representatives; and U.S. importers.

Number of Respondents: 101.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 58,996.

Animal and Plant Health Inspection Service

Title: Importation of Live Fish, Fertilized Eggs, and Gametes from Tilapia Lake Virus-Susceptible Species.

OMB Control Number: 0579–0473.

Summary of Collection: The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States.

Need and Use of the Information: APHIS has determined that the introduction and establishment of Tilapia Lake Virus (TiLV) posed a serious threat to U.S. agriculture and published a Federal Order placing certain requirements on the importation of all live fish, fertilized eggs, and gametes from TiLV-susceptible species imported from all countries. These imported items must be accompanied by a U.S. Department of Agriculture-issued import permit, an official veterinary health certificate, and evidence of a veterinary inspection at a designated U.S. port of entry before being allowed entry into the United States.

Description of Respondents: State, Local, or Tribal Government, Importers, and Veterinarians.

Number of Respondents: 57.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 96 hours.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–16054 Filed 7–23–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 21, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 24, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: 7 CFR part 1744, subpart B, Lien Accommodations and Subordination Policy.

OMB Control Number: 0572–0126.

Summary of Collection: The information collected in this information collection package is received from RUS telecommunications borrowers. The policy of considering Lien Accommodations will continue to facilitate funding from non-agency sources in order to meet the growing capital needs of rural Local Exchange Carriers (LECs). Depending on the purposes for which a lien accommodation is sought, RUS will utilize the information to provide an expedited approval for borrowers that meet the financial tests described in this rule. RUS believes that borrowers that are financially sound should be afforded more flexibility with regard to financial arrangements with outside lenders for the purpose of promoting rural telecommunications. The tests are designed to ensure that the financial strength of the borrower is more than sufficient to protect the government's loan security interests; hence, the lien accommodations will not adversely affect the government's financial interests.

Need and Use of the Information: In order to facilitate supplemental financing for telecommunications services projects, RUS provides fast track lien accommodations to private lenders who propose to lend to RUS borrowers who meet certain financial strength evaluations. Depending on the purposes for which a lien accommodation is sought, RUS will use the information to provide expedited approval for borrowers that meet the financial tests. The tests are designed to ensure that the financial strength of the borrower is more than sufficient to protect the government's loan security interests; hence, the lien accommodations will not adversely affect the government's financial interests.

Description of Respondents: Business or other for-profit; Not for-profit institutions.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1.

Rural Utilities Service

Title: 7 CFR part 1752, Special Servicing of Telecommunication Programs Loans for Financially Distressed Borrowers.

OMB Control Number: 0572–0153.

Summary of Collection: The Rural Utilities Service (RUS or the Agency) Telecommunications Program (Program) provides loan funding to build and expand broadband and telecommunications services into unserved and underserved rural communities, along with very limited funding to support the costs to acquire equipment to provide distance learning and telemedicine service. RUS published a Final rule codifying a new servicing regulation on February 25, 2020 in the **Federal Register** which outlines policies for servicing actions

associated with distressed borrowers from the Telecommunications Infrastructure Loan Program, Rural Broadband Program, Distance Learning and Telemedicine Program, Broadband Initiatives Program, and Rural e-Connectivity Pilot Program. The purpose of the regulation is to streamline servicing actions, improve the government's recovery on such loans, and improve customer service.

Need and Use of the Information: The information collection addresses RD's expanded authority, with the codification of the rulemaking, to address servicing actions. RD considers it imperative to use the expanded authority for servicing actions associated with the RUS Telecommunications Programs in order to: (1) Maximize risk management of loan portfolio; (2) reduce duplication of effort between federal agencies, which may expedite servicing of distressed borrowers; (3) ensure efficient recovery of debt which may mitigate negative impact on program subsidy rates; and (4) simplify the servicing process for the Agency and therefore minimize the financial burden and costs on borrowers.

The Agency provides forms and/or guidelines to assist in collection and submission of the information required to service loans. In some cases, use of Agency forms is optional and the borrower may submit the information required on other forms. The forms or related items completed by the borrower are submitted to and evaluated by the Agency. Failure to collect proper information from borrowers could result in improper determinations of servicing assistance, hinder the government's recovery of such loans as well as encumber customer service.

Description of Respondents: Business or other for-profit; Not for-profit institutions.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 695.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–16041 Filed 7–23–20; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 21, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 24, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Area Risk Protection Insurance.

OMB Control Number: 0563–0083.

Summary of Collection: The Federal Crop Insurance Corporation (FCIC) is a wholly-owned Government corporation created February 16, 1938 (7 U.S.C. 1501). The program was amended previously, but Public Law 96–365, dated September 26, 1980, provided for nationwide expansion of a comprehensive crop insurance program. The Federal Crop Insurance Act, as amended in later years further expanded this role of the crop insurance program to be the principal tool for risk management by producers of agricultural commodities. The Act was again amended on June 20, 2020, by Public Law 106–224 which mandates changes to crop insurance regulations, provides for independent review of crop insurance products by persons experienced in actuaries and in underwriting, and gives contracting authority for the development of new products.

Need and Use of the Information: The Area Risk Protection Insurance (ARPI) includes three separate plans of insurance: (1) Area Revenue Protection which protects against price declines and automatically includes Upside Harvest Price Protection (UHPP) which protects against price increases; (2) ARP with the Harvest Price Exclusion, which excludes UHPP and protects against price declines but not against price increases; and (3) Area Yield Protection which only protects against loss of yield. Using a wide range of data elements producers are required to report specific data when they apply for ARPI such as acreage and yields. Insurance companies accept applications; issue policies; establish and provide insurance coverage; compute liability, premium, subsidies, and losses; indemnify producers; and report specific data to FCIC as required in Appendix III/M13 Handbook.

If producers and insurance companies did not submit the required data at the specified time, accurate liabilities, premium, and subsidies may not be determined, errors may not be resolved timely, producers may not receive accurate indemnities, payments may be late, crop insurance may not be actuarially sound as mandated by the Act.

Description of Respondents: Producers and insurance companies.

Number of Respondents: 18,634.

Frequency of Responses: Weekly, monthly, quarterly, annually, semi-annually.

Total Burden Hours: 80,324.

Ruth Brown,

Departmental Information Clearance Officer.

[FR Doc. 2020–16061 Filed 7–23–20; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0038]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit From Quarantined Areas

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the interstate movement of regulated nursery stock and fruit from quarantined areas to prevent the spread of citrus canker.

DATES: We will consider all comments that we receive on or before September 22, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0038.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0038, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0038* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information associated with the regulations for the interstate movement of regulated nursery stock and fruit from quarantined areas to prevent the spread of citrus canker, contact Mr. Allen Proxmire, PPQ, APHIS, USDA, 4700 River Road, Unit 137, Riverdale, MD 20737–1231; (301) 851–2307. For information on the information collection process, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit From Quarantined Areas.

OMB Control Number: 0579–0317.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as citrus canker, that are new to or not widely distributed within the United States.

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit of citrus and citrus relatives (family *Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants and cause infected fruit to drop from trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The Animal and Plant Health Inspection Service's regulations to prevent the interstate spread of citrus canker are contained in ''Subpart M-Citrus Canker'' (7 CFR 301.75–1 through 301.75–17). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide, among other things, conditions under which regulated nursery stock and fruit may be moved interstate. The interstate movement of regulated nursery stock and fruit from quarantined areas involves information collection activities including compliance agreements, limited permits, requests for Federal certificates, and appeals.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.2 hours per response.

Respondents: Citrus growers and packinghouses.

Estimated annual number of respondents: 367.

Estimated annual number of responses per respondent: 37.

Estimated annual number of responses: 13,644.

Estimated total annual burden on respondents: 2,678 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 20th day of July 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–16026 Filed 7–23–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Results of Administrative Review of the Antidumping Duty Order; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of certain circular welded carbon steel pipe and tubes (steel pipes and tubes) from Taiwan were made at less than normal value during the period of review (POR) May 1, 2018 through April 30, 2019. We invite all interested parties to comment on these preliminary results.

DATES: Applicable July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty (AD) order on steel pipes and tubes from

Taiwan.[1] Pursuant to requests from interested parties, Commerce initiated an administrative review of the AD order with respect to 27 companies, in accordance with section 751(a) of Tariff Act of 1930, as amended (the Act).[2] On August 1, 2019, Commerce selected one producer/exporter of subject merchandise, Shin Yang Steel Co., Ltd (Shin Yang), as the sole mandatory respondent for this review.[3]

Subsequent to the initiation of the administrative review, several interested parties timely withdrew their request for review of all companies except Shin Yang, and on November 22, 2019, Commerce published a partial rescission of this administrative review with respect to those companies.[4] For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[5]

Pursuant to section 751(a)(3)(A) of the Act, Commerce determined that it was not practicable to complete the preliminary results of this review within the 245 days and extended the preliminary results by 119 days, until May 29, 2020.[6] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days pursuant to section 751(a)(1) of the Act, thereby extending the deadline for these results until July 20, 2020.[7]

Scope of the Order

The products covered by this order are certain circular welded carbon steel pipes and tubes. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description of the scope of the order is dispositive. For a full description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751 of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of this Review

We preliminarily determine that the following weighted-average dumping margin exists for the period of May 1, 2018 through April 30, 2019:

Exporter/producer	Weighted-average dumping margin (percent)
Shin Yang Steel Co., Ltd	1.71

Assessment Rates

Upon completion of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If Shin Yang's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis*. If Shin Yang's weighted-average dumping margin is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.[8]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Shin Yang for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Shin Yang will be equal to the weighted-average dumping margin established in the final results of this administrative review, (except if the *ad valorem* rate is *de minimis,* then the cash deposit rate will be zero); (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 18479 (May 1, 2019).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[3] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order of Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Respondent Selection,'' dated August 1, 2019.

[4] *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Partial Rescission of Antidumping Duty and Administrative Review; 2018—2019,* 84 FR 64463 (November 22, 2019).

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Memorandum, ''Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated January 27, 2020.

[7] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[8] *See* section 751(a)(2)(C) of the Act.

[9] For a full description of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

the rate established for the most recently-completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 9.70 percent, the all-others rate established in the investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed to parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for filing case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Case and rebuttal briefs should be filed using ACCESS[12] and must be served on interested parties.[13] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain requirements for serving documents containing business proprietary information, until further notice.[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

The preliminary results of this administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1) and 351.221(b)(4).

Dated: July 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2020–16094 Filed 7–23–20; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Antidumping Duty Order,* 49 FR 19369 (May 7, 1984) (*Order*).

[11] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[12] *See generally* 19 CFR 351.303.

[13] *See* 19 CFR 351.303(f).

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–812]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Brittany Bauer, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959 or (202) 482–3860, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2019, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on certain carbon and alloy steel cut-to-length plate from Belgium.[1] This review covers four producers and/or exporters of the subject merchandise.[2] Commerce selected two companies, Industeel Belgium S.A. (Industeel) and NLMK Belgium, for individual examination. The producers and/or exporters not selected for individual examination are listed in the ''Preliminary Results of the Review'' section of this notice.

On January 9, 2020, Commerce extended the preliminary results of this review by 119 days, until May 29, 2020.[3] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 20, 2020.[4] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5]

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[2] Commerce collapsed NLMK Clabecq S.A., NLMK Plate Sales S.A., NLMK Sales Europe S.A., NLMK Manage Steel Center S.A., and NLMK La Louviere S.A. as a single entity (collectively, NLMK Belgium) in the less-than-fair-value investigation. *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part,* 82 FR 16378 (April 4, 2017).

[3] *See* Memorandum, ''Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Extension of Deadline for Preliminary Results of 2018–2019 Antidumping Duty Administrative Review,'' dated January 9, 2020.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2018–2019

Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Belgium. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary 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.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/summary.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period May 1, 2018 through April 30, 2019:

Producers/exporters	Weighted-average dumping margin (percent)
Industeel Belgium S.A	19.57
NLMK Clabecq S.A./NLMK Plate Sales S.A./NLMK Sales Europe S.A./NLMK Manage Steel Center S.A./NLMK La Louviere S.A	12.29
Stahlo Stahl Service GmbH & Co. KG*	15.93
Tranter Service Centers*	15.93

* Review-Specific Average Rate[7]

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[8] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[10] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] Case and rebuttal briefs should be filed using ACCESS.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[13] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[14] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[16]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[17]

Pursuant to 19 CFR 351.212(b)(1), where the respondents reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondents did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average[18] of the cash deposit rates calculated for Industeel and NLMK Belgium, excluding any which are zero or *de minimis* or determined entirely based on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] For a full description of the scope of the order, *see* Preliminary Decision Memorandum.

[7] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. See section 735(c)(5)(A) of the Act.

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(c).

[10] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] *See* 19 CFR 351.303.

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310(d).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[16] *See* Section 751(a)(3)(A) of the Act.

[17] *See* 19 CFR 351.212(b).

[18] This rate was calculated as discussed in footnote 5, above.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[19]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.40 percent, the all-others rate established in the LTFV investigation.[20] These deposit requirements, when imposed, shall remain in effect until further notice.

[19] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[20] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 17, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Companies Not Selected for Individual Examination
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2020–16073 Filed 7–23–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–810]

Polyethylene Terephthalate Resin From the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that OCTAL SAOC–FZC (OCTAL), the sole respondent subject to this antidumping duty (AD) administrative review, did not make sales of subject merchandise at less than normal value during the period of review (POR) May 1, 2018 through April 30, 2019. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill, 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) 482–3518.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2019, Commerce published a notice initiating an AD administrative review of polyethylene terephthalate resin (PET resin) from the Sultanate of Oman (Oman) covering OCTAL for the POR.[1] During the course of this administrative review, OCTAL responded to Commerce's questionnaire and supplemental questionnaires and the petitioners filed multiple submissions. For further details, *see* the accompanying Preliminary Decision Memorandum.[2]

On January 6, 2020, Commerce extended the deadline for issuing the preliminary results of this review from January 31, 2020 to May 29, 2020.[3] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these preliminary results until July 20, 2020.[4]

Scope of the Order

The merchandise covered by this order is PET resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The merchandise subject to this order is properly classified under subheadings 3907.60.00.30, 3907.61.0000, 3907.61.0010, 3907.61.0050, 3907.69.0000, 3907.69.0010, and 3907.69.0050 of the Harmonized Tariff Schedule of the United States (HTSUS).[5] Although the HTSUS

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2018–2019 Antidumping Duty Administrative Review of Polyethylene Terephthalate Resin from the Sultanate of Oman,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See* Memorandum, ''Polyethylene Terephthalate Resin from the Sultanate of Oman: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated January 6, 2020.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[5] On January 27, 2017, Commerce added HTS numbers 3907.61.0000 and 3907.69.0000 to the Case Reference File. *See* Commerce Memorandum re: ''Request from Customs and Border Protection to Update the ACE Case Reference File: Polyethylene Terephthalate Resin form the Sultanate of Oman (A–523–810) dated January 31, 2017. Further, on February 28, 2019, Commerce added HTS numbers 3907.61.0010, 3907.61.0050, 3907.69.0010 and

subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by this order is dispositive. For a full description of the scope of the order, *see* Preliminary Decision Memorandum.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price has been calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period May 1, 2018 through April 30, 2019:

Manufacturer/exporter	Weighted-average margin (percent)
OCTAL SAOC—FZC	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations used in its analysis to interested parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[8] Executive summaries should be limited to five pages total, including footnotes.[9] Case and rebuttal briefs should be filed using ACCESS.[10] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, Commerce will notify interested parties of the hearing date and time. Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of hearing participants; and (3) a list of the issues to be discussed in the hearing. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.[12]

Assessment Rates

Upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We will calculate importer-specific assessment rates equal to the ratio of the total amount of dumping calculated for examined U.S. sales of merchandise imported by a particular importer, to the total entered value of the reported U.S. sales in accordance with 19 CFR 351.212(b)(1).[13] Where the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[14] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.[15]

For entries of subject merchandise during the POR produced by the respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of PET resin from Oman entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for OCTAL will be equal to the weighted-average dumping margin established in the final results of this review (except, if the weighted-average dumping margin is zero or *de minimis,* no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the manufacturer of the merchandise; and (4) the cash deposit

3907.69.0050 to the Case Reference File. *See* Memorandum, ''Request from U.S. Customs and Border Protection to Update the ACE Case Reference File: Polyethylene Terephthalate Resin from the Sultanate of Oman (A–523–810),'' dated February 28, 2019.

[6] *See* Preliminary Decision Memorandum.

[7] *See* 19 CFR 351.309(d)(1).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *Id.*

[10] *See* 19 CFR 351.303.

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

[13] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[14] *See Final Modification for Reviews,* 77 FR at 8103; see also 19 CFR 351.106(c)(2).

[15] *See* section 751(a)(2)(C) of the Act.

rate for all other manufacturers or exporters will continue to be 7.62 percent *ad valorem,* the all-others rate established in the less-than-fair-value investigation.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: July 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

APPENDIX

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Particular Market Situation Allegation (PMS)
V. Discussion of the Methodology
  A. Date of Sale
  B. Normal Value Comparisons
  C. Product Comparisons
  D. EP/CEP
  E. Normal Value
VI. Currency Conversion
VII. Recommendation

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[16] *See Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India,* and the Sultanate of Oman: Amended Final Affirmative Antidumping Determination (Sultanate of Oman) and Antidumping Duty Orders, 81 FR 27979 (May 6, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–891]

Carbon and Alloy Steel Wire Rod From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that POSCO, a producer and exporter of carbon and alloy steel wire rod (wire rod) from the Republic of Korea (Korea), sold subject merchandise in the United States at prices below normal value during the period of review (POR) October 31, 2017 through April 30, 2019. We invite all interested parties to comment on these preliminary results.

DATES: Applicable July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting the first administrative review of the antidumping duty order on wire rod from Korea in accordance with section 751(a)(1)(B) of Tariff Act of 1930, as amended (the Act).[1] On December 11, 2018, in accordance with 19 CFR 351.221(c)(1)(i), we initiated this administrative review of the *Order* covering POSCO, the sole producer and exporter of the subject merchandise.[2]

On January 29, 2020, we extended the time limit for the preliminary results of this review from 245 days to 364 days.[3] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 20, 2020.[4]

For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum, dated concurrently with these preliminary results and hereby adopted by this notice.[5]

Scope of the Order

The scope of the *Order* includes certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Excluded from the scope are grade 1078 and higher tire cord quality wire rod to be used in the production of tire cord wire. Also, excluded from the scope are valve spring quality (VSQ) steel products which is defined as wire rod. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Constructed export prices are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results

We preliminarily determine the following weighted-average dumping

[1] *See Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey, 83 FR 23417* (May 21, 2018) (*Order*); *see also Carbon and Alloy Steel Wire Rod from the Republic of Korea and the United Kingdom: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 13888 (April 8, 2019); and *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 27582 (June 13, 2019).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2017–2019,'' dated January 29, 2020.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Carbon and Alloy Steel Wire Rod from the Republic of Korea; 2017–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *Id.*

margin for the period October 1, 2017 through September 30, 2018:

Exporter and producer	Weighted-average dumping margin (percent)
POSCO	1.01

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), we calculated an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of those sales. Where the mandatory respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by the respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate such unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[7]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for POSCO will be equal to POSCO's weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the producer is, then the cash deposit rate will be the rate established for the completed segment for the most recent POR for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 41.1 percent, the all-others rate established in the underlying investigation.[8] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[9]

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance at a date to be determined. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[10] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] Case and rebuttal briefs should be filed using ACCESS.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed request for a hearing must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[13] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[14]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.[16]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Description of Products Under Review
IV. Comparisons to Normal Value
V. Date of Sale
VI. Constructed Export Price
VII. Normal Value
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2020–16071 Filed 7–23–20; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* section 751(a)(2)(C) of the Act.

[8] *See Order,* 81 FR at 23419.

[9] *See* 19 CFR 351.224(b).

[10] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] *See* 19 CFR 351.303.

[13] *See* 19 CFR 351.310(c); *see also* 19 CFR 351.303(b)(1).

[14] *See* 19 CFR 351.310(c).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[16] *See* section 751(a)(3)(A) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that the sole producer/exporter subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR) May 1, 2018 through April 30, 2019. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes (pipes and tubes) from India. Commerce extended the time limit for the preliminary results of this review to May 29, 2020, in accordance with section 751(a)(3)(A) of The Tariff Act of 1930, as amended (the Act).[1] Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for the preliminary results of this administrative review to July 20, 2020.[2]

We initiated this administrative review with respect to 29 companies.[3] On December 31, 2019, we rescinded this administrative review with respect to 28 companies.[4] Garg Tube is the sole remaining respondent in this administrative review.[5]

Scope of the Order

The merchandise subject to the order is pipe and tube. The pipe and tube subject to the order is currently classifiable under subheadings 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(2) of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period May 1, 2018 through April 30, 2019.

Producer or exporter	Weighted-average dumping margin (percent)
Garg Tube Export LLP and Garg Tube Limited (collectively Garg Tube)	8.42

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this administrative review within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[6] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[9] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.

Commerce intends to issue the final results of this administrative review,

[1] *See* Memorandum, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated January 13, 2020.

[2] *See* Memorandum ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739, 33741 (July 15, 2019).

[4] *See Welded Carbon Steel Standard Pipes and Tubes from India: Rescission of Antidumping Duty Administrative Review, in Part; 2018–2019,* 84 FR 72298 (December 31, 2019).

[5] Consistent with the last administrative review, we continue to treat Garg Tube Export LLP and Garg Tube Limited as a single collapsed entity and refer to this single entity as Garg Tube. *See* Memorandum, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,'' dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum) at 2, n.6.

[6] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'').

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[8] *See* 19 CFR 351.303 (for general filing requirements).

[9] *See* 19 CFR 351.310(c).

including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the final results, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If a respondent's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, then we will calculate importer-specific antidumping duty assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).[10] If Garg Tube's weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific antidumping duty assessment rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regards to antidumping duties.[11]

For entries of subject merchandise during the POR produced by Garg Tube for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries.[12]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review. The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of pipes and tubes from India entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will be the all-others rate established in the less-than-fair-value investigation for this proceeding, 7.08 percent.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221.

Dated: July 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

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[10] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[11] *Id.* at 8102–03; *see also* 19 CFR 351.106(c)(2).

[12] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384, 17385 (May 12, 1986).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Light-Walled Rectangular Pipe and Tube From Turkey: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission, and Preliminary Determination of No Shipments; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of light-walled rectangular pipe and tube (LWRPT) were made at prices below normal value during the period of review (POR) May 1, 2018 through April 30, 2019. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, 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.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2019, domestic interested parties Independence Tube Corporation and Southland Tube (collectively, Nucor) requested an administrative review of eleven companies under the antidumping duty (AD) order on LWRPT from Turkey.[1] On July 15, 2019, Commerce published a notice initiating an administrative review of the AD order on LWRPT from Turkey covering these eleven companies for the POR.[2] On July 30, 2019, Commerce selected Agir Haddecilik A.S. (Agir) and Noksel Celik Boru Sanayi A.S. (Noksel) as mandatory respondents.[3] On October 15, 2019, Nucor timely withdrew its request for an administrative review of four companies, including Agir.[4] Eight companies claimed that they made no shipments of subject merchandise to the United States during the POR, including

[1] *See* Nucor's Letter, ''Light-Walled Rectangular Pipe and Tube from Turkey: Request for Administrative Review,'' dated May 31, 2019.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[3] *See* Commerce's Letters to Agir and Noksel dated July 30, 2019 (Initial Questionnaire).

[4] *See* Nucor's Letter, ''Light-Walled Rectangular Pipe and Tube from Turkey: Partial Withdrawal of Request for Administrative Review,'' dated October 15, 2019.

two companies for which Nucor has withdrawn its request for this review.[5]

On January 6, 2020, Commerce extended the deadline for issuing the preliminary results of this review from January 31, 2020 to May 29, 2020.[6] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these preliminary results until July 20, 2020.[7]

Scope of the Order

The merchandise covered by the antidumping order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 millimeters. The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States at subheadings 7306.61.50.00 and 7306.61.70.60. For a full description of the scope of the order, *see* the Preliminary Decision Memorandum.[8]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export prices have been calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is provided in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws their request(s) within 90 days of the publication date of the notice of initiation of the requested review. On October 15, 2019, Nucor timely withdrew its request for an administrative review of Agir, Cinar Boru Profil Sanayi ve Ticaret A.S., MTS Lojistik ve Tasimacilik Hizmetleri Ticaret A.S., and Ozdemir Boru Profil Sanayi ve Ticaret Ltd Sti.[9] Because Nucor timely withdrew its request for a review of these four companies, and no other parties requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the AD order on LWRPT from Turkey with respect to these four companies.

Preliminary Determination of No Shipments

Six companies for which this review is ongoing have claimed that each company had no entries of subject merchandise during the POR. Commerce sent its standard inquiry to U.S. Customs and Border Protection (CBP) requesting information which may contradict these claims. CBP has provided no information in response to Commerce's inquiries that contradicted the claims of six of the companies still under review which claimed to have made no shipments of subject merchandise to the United States during the POR. Therefore, Commerce preliminarily determines that these six companies had no entries of subject merchandise during the POR.[10] For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with Commerce's practice in a market economy proceeding, Commerce is not rescinding this administrative review, in part, with respect to these six companies, but intends to complete the review with respect to the companies for which it has preliminarily found no shipments and to issue appropriate liquidation instructions to CBP based on the final results of the review.[11]

Preliminary Results of Review

Commerce preliminarily determines the following weighted-average dumping margin exists for the period May 1, 2018 through April 30, 2019:

Producer or exporter	Weighted-average dumping margin (percent)
Noksel Celik Boru Sanayi A.S. (Noksel)	23.39

Disclosure and Public Comment

Commerce intends to disclose the calculations used in its analysis to interested parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[12] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[13] Executive summaries should be limited to five pages total, including footnotes.[14] Case and rebuttal briefs should be filed using ACCESS.[15] Note that Commerce has temporarily

[5] *See* Cinar Boru Profil Sanayi ve Ticaret Anonim Sirketi's Letter, ''Light-Walled Rectangular Pipe and Tube from Turkey (A–489–815),'' dated June 26, 2019; Ozdemir Boru Profil Sanayi ve Ticaret Ltd Sti's Letter, ''Light-Walled Rectangular Pipe and Tube from Turkey (A–489–815): Antidumping Duty Administrative Review (5/1/18–4/30/19),'' dated July 22, 2019; Çayirova Boru Sanayi ve Ticaret A.Ş., Yücel Boru ve Profil Endüstrisi A.Ş., and Yücelboru Ihracat Ithalat ve Pazarlama A.Ş.'s Letter, ''Light-walled rectangular pipe from Turkey; Yucel no shipments letter,'' dated August 10, 2019; and Tosçelik Profil ve Sac Endüstrisi A.S., Tosyali Dis Ticaret A.S. and Toscelik Metal Ticaret A.Ş.'s Letter, ''Light-walled rectangular pipe from Turkey; Yucel no shipments letter,'' dated August 10, 2019.

[6] *See* Memorandum, ''Light-Walled Rectangular Pipe and Tube from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated January 6, 2020.

[7] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[8] *See* Memorandum, ''Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review: Light-Walled Rectangular Pipe and Tube from Turkey; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[9] *See* Nucor's Letter, ''Light-Walled Rectangular Pipe and Tube from Turkey: Partial Withdrawal of Request for Administrative Review,'' dated October 15, 2019.

[10] The six companies are: (1) Cayirova Boru Sanayi ve Ticaret A.S.; (2) Yucel Boru ve Profil Endustrisi A.S.; (3) Yucelboru Ihracat Ithalat ve Pazarlama A.S.; (4) Toscelik Profil ve Sac Endustrisi A.S.; (5) Tosyali Dis Ticaret A.S.; and (6) Toscelik Metal Ticaret A.S.

[11] *See, e.g., Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 32090, 32091 (June 5, 2015), unchanged in *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014,* 80 FR 76674 (December 10, 2015).

[12] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *Id.*

[15] *See* 19 CFR 351.303.

modified certain of its requirements for serving documents containing business proprietary information, until further notice.[16]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, Commerce will notify interested parties of the hearing date and time to be determined. Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of hearing participants; and (3) a list of the issues to be discussed in the hearing. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.[17]

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We will calculate importer-specific assessment rates equal to the ratio of the total amount of dumping calculated for examined U.S. sales of merchandise imported by a particular importer to the total entered value of the reported U.S. sales in accordance with 19 CFR 351.212(b)(1).[18] Where the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[19] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.[20]

For entries of subject merchandise during the POR produced by the respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of LWRPT from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Noksel will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis,* then no cash deposit will be required); (2) for merchandise exported by a producer or exporter not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter was included; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 27.04 percent *ad valorem,* the all-others rate established in the less-than-fair-value investigation.[21] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: July 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Partial Rescission of Review
V. Preliminary Determination of No Shipments
VI. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2020–16072 Filed 7–23–20; 8:45 am]

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[16] *See Temporary Rule.*

[17] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

[18] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[19] *See Final Modification for Reviews,* 77 FR at 8103; *see also* 19 CFR 351.106(c)(2).

[20] *See* section 751(a)(2)(C) of the Act.

[21] *See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey,* 73 FR 19814 (April 11, 2008).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of National Estuarine Research Reserve

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the Lake Superior National Estuarine Research Reserve.

DATES: NOAA will consider all written comments received by September 18, 2020. The virtual public meeting will be held on Wednesday September 9, 2020 at 4:00 p.m. CDT.

ADDRESSES: You may submit comments on the coastal management program and national estuarine research reserve NOAA intends to evaluate by emailing Ralph Cantral, Senior Advisor, NOAA Office for Coastal Management at *Ralph.Cantral@noaa.gov*. Comments that the Office for Coastal Management receives are considered part of the public record and may be publicly

accessible. Any personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender may also be publicly accessible. NOAA will accept anonymous comments. To participate in the public meeting Wednesday, September 9, 2020 at 4:00 p.m. CDT, registration is required two hours in advance by 2:00 p.m. CDT.

Registration: http://noaacsc.adobeconnect.com/lsnerrpublicmeeting/event/event_info.html. You may participate online or by phone. If you would like to provide comment during the public meeting, please select ''yes'' during the online registration. The line-up of speakers will be based on your date and time of registration.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Evaluator, NOAA Office for Coastal Management by phone at (301) 233–2998 or email *Ralph.Cantral@noaa.gov*. Copies of the previous evaluation findings and reserve's management plan and site profile may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations*. A copy of the evaluation notification letter and most recent progress reports may be obtained upon request by contacting Ralph Cantral.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state coastal programs and national estuarine research reserves. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. For the evaluation of the Lake Superior National Estuarine Research Reserve, NOAA will consider the extent to which the state has met the national objectives, adhered to its management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the Coastal Zone Management Act.

When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–16099 Filed 7–23–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Upcoming Changes to the National Spatial Reference System (NSRS)

AGENCY: The Office of the National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of upcoming changes.

SUMMARY: The National Geodetic Survey (NGS) is in the process of modernizing the National Spatial Reference System (NSRS) and plans to replace all three North American Datum of 1983 (NAD 83) frames and all vertical datums, including the North American Vertical Datum of 1988 (NAVD 88), with four new terrestrial reference frames and one new geopotential datum to which all geodetic coordinates and derived coordinates within the NSRS will be referenced. The new reference frames will rely primarily on Global Navigation Satellite Systems (GNSS), such as the Global Positioning System (GPS), as well as on a gravimetric geoid model resulting from the Gravity for the Redefinition of the American Vertical Datum (GRAV–D) Project. The modernized NSRS will be easier to access and maintain than the existing NSRS, which relies on physical survey marks that deteriorate over time and will result in new, more accurate, time-tagged geodetic coordinates (*i.e.,* latitude, longitude, ellipsoid height, orthometric height, acceleration of gravity, deflections of the vertical, and others) at all geodetic control points within the NSRS. Additionally, coordinates will be estimated within these frames and datum at five-year reference epochs from the time-tagged coordinates, beginning with 2020.00. Initial completion and rollout of the NSRS modernization is expected to occur between 2022 and 2025, with additional support tools and services rolled out in subsequent years.

DATES: The modernization of the NSRS will occur between 2022 and 2025, with the release of additional tools and services occurring between 3 and 5 years later.

ADDRESSES: National Geodetic Survey, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Dru Smith, NSRS Modernization Manager, by email at *dru.smith@noaa.gov,* phone at (240) 533–9654, or mail at NOAA/NOS/NGS 1315 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: The modernization of the NSRS is designed to improve the accuracy of federal geodetic control. For over 200 years, NGS and its predecessor agencies, dating back to the founding of the Survey of the Coast in 1807, have been the stewards of the geodetic infrastructure—the NSRS—of the United States. As technology and scientific knowledge advance, NGS occasionally modernizes the NSRS. This announcement reflects part of the latest modernization effort.

The last significant modernization of the NSRS resulted in the creation of the original North American Datum of 1983 (54 FR 25318) and the North American Vertical Datum of 1988 (58 FR 34245). These datums were defined before the widespread use of GPS and GNSS and were determined using classical geodetic measurement techniques. Over the years, minor corrections to and expansion of the NSRS occurred; however, no significant update was possible until now. Through modern geodetic surveying technology, extensive data collection initiatives, and advances in scientific knowledge, a more accurate, modern NSRS is possible. The new frames and datum shall be known as the ''North American Terrestrial Reference Frame of 2022,'' the ''Pacific Terrestrial Reference Frame of 2022,'' the ''Caribbean Terrestrial Reference Frame of 2022,'' the ''Mariana Terrestrial Reference Frame of 2022,'' and the ''North American-Pacific Geopotential Datum of 2022;'' and may be referred to as ''NATRF2022,'' ''PATRF2022,'' ''CATRF2022,'' ''MATRF2022,'' and ''NAPGD2022,'' respectively. In order to accustom users to a time-dependent NSRS, NGS will also be estimating, and providing to the public, coordinates on geodetic control points at five-year reference epochs.

Additional information regarding the modernization of the NSRS may be found at *https://geodesy.noaa.gov/datums/newdatums/index.shtml.*

Authority: Coast and Geodetic Survey Act of 1947, 33 U.S.C. 883a *et seq.*

Juliana P. Blackwell,

Director, National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–16068 Filed 7–23–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Consideration of Potential Age-Limiting Observations To Be Used To Compute 2020.00 Reference Epoch Coordinates in the National Spatial Reference System

AGENCY: The Office of the National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Request for information.

SUMMARY: The National Geodetic Survey (NGS) is considering imposing age limits on the observations that will be used in the creation of 2020.00 Reference Epoch Coordinates (RECs), as part of the modernization of the National Spatial Reference System (NSRS). Due to expected uncertainties in the vertical component of the Intra-Frame Velocity Model (IFVM), the age limits cannot be determined until well-structured, data-driven experiments have been conducted. Such experiments are expected to occur during the 2020 reference epoch adjustment projects (geometric, orthometric and gravimetric), which are scheduled for calendar year 2022. Therefore, NGS requests that users take new Global Navigation Satellite System (GNSS) observations on geodetic control marks of interest, especially those marks that have not been surveyed since January 1, 2010, and share them with NGS before December 31, 2021.

DATES: The effective date of this announcement is upon publication of this notice. Submission of GNSS observations on geodetic control marks of interest are requested before December 31, 2021.

ADDRESSES: National Geodetic Survey, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Dru Smith, NSRS Modernization Manager, by email at *dru.smith@noaa.gov,* by phone at (240) 533–9654, or by mail at NOAA/NOS/NGS 1315 East-West Highway, Silver Spring, MD, 20910.

SUPPLEMENTARY INFORMATION: In 2017, the National Geodetic Survey (NGS) announced its plans to estimate RECs on a five-year cycle in NOAA Technical Report NOS NGS 67, 2019, starting with the first reference epoch at 2020.00, as part of the modernization of the NSRS. In the Technical Report, the exact observations to be used for this estimation were listed as ''To Be Determined.'' Now, NGS is considering imposing age limits upon the observations that will be used, particularly because of expected uncertainties in the vertical component of the IFVM. These age limits cannot be determined until additional well-structured, data-driven experiments are conducted. Such experiments are expected to occur during the 2020 reference epoch adjustment projects (geometric, orthometric, and gravimetric), which are scheduled for calendar year 2022.

However, since the cut-off for new observations to enter those adjustment projects is December 31, 2021, any decision to age-limit input observations will come too late for submissions to impact the 2020 RECs. While the cut-off for age-limited observations is unknown, certain assumptions are safe to make. For instance, it is unlikely that such an age-limit will be fewer than 10 years. Older observations may be used in the estimation of 2020 RECs, but this cannot be guaranteed. As such, NGS requests that users take new GNSS observations on geodetic control marks of interest that have not been surveyed since January 1, 2010, and asks the users to submit the observations to NGS before December 31, 2021. Users may either (a) submit existing unsubmitted observations through the OPUS-Share tool or (b) conduct new GNSS observations and submit the data to NGS via the OPUS-Share tool.

In order to increase the submission of GNSS observations on marks, NGS is prioritizing the finalization of an expanded OPUS-Projects tool, which will allow real-time kinematic and real time network (RTK/RTN) observations to be submitted, rather than the standard four-hour observations required in OPUS-Share. Initial roll-out of this new tool is expected to occur during calendar year 2020.

This action is designed to increase both the number and the coordinate accuracy of geodetic control points, which in the modernized NSRS will have an estimated 2020.00 REC. Historically, NGS has combined data across multiple decades to estimate geodetic coordinates, yet such efforts have not fully accounted for the lack of information about vertical motion of geodetic control points throughout the years. Since height information is critical to the understanding of floods, failure to compute heights accurately can have negative impacts on property and lives. NGS views periodic re-surveys of geodetic control points, rather than the estimation of coordinates from observations that are years (or even decades) old, as the most effective way to maintain accurate and up-to-date knowledge of geodetic coordinates, including heights. As such, this announcement provides users of the NSRS with advance notice that geodetic control points of interest to them should be re-surveyed for the most accurate representation of geodetic coordinates, including heights.

(Authority: Coast and Geodetic Survey Act of 1947, 33 U.S.C. 883a *et seq.*)

Juliana P. Blackwell,

Director, National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–16084 Filed 7–23–20; 8:45 am]

BILLING CODE 3510–JE–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and services on the Procurement List furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

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

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):

8415–01–587–9853—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XSS

8415–01–587–9855—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XSR

8415–01–587–9858—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XSL
8415–01–587–9863—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, SS
8415–01–587–9866—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, SR
8415–01–588–0254—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, SL
8415–01–588–0259—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, MS
8415–01–588–0261—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, MR
8415–01–588–0269—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, ML
8415–01–588–0270—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, LS
8415–01–588–0273—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, LR
8415–01–588–0283—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, LL
8415–01–588–0290—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XLS
8415–01–588–0292—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XLR
8415–01–588–0300—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XLL
8415–01–588–0308—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XXLS
8415–01–588–0313—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XXLR
8415–01–588–0315—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XXLL

Mandatory Source of Supply: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI
Contracting Activity: W6QK ACC–APG Natick, Natick, MA
NSN(s)—Product Name(s):
8415–01–548–7187—Shirt, Combat, Advanced, Foliage Green, X-Small
8415–01–548–7201—Shirt, Combat, Advanced, Foliage Green, Small
8415–01–548–7206—Shirt, Combat, Advanced, Foliage Green, Medium
8415–01–548–7209—Shirt, Combat, Advanced, Foliage Green, Large
8415–01–548–7215—Shirt, Combat, Advanced, Foliage Green, XX-Large
8415–01–548–7232—Shirt, Combat, Advanced, Foliage Green, X-Large
8415–01–548–7236—Shirt, Combat, Advanced, Foliage Green, XXX-Large
Mandatory Source of Supply: Alphapointe, Kansas City, MO; Goodwill Industries of South Florida, Inc., Miami, FL; Mount Rogers Community Services Board, Wytheville, VA; San Antonio Lighthouse for the Blind, San Antonio, TX; Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY; Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: W6QK ACC–APG Natick, Natick, MA
NSN(s)—Product Name(s):
8415–01–580–4831—Shirt, Combat, Flame Resistant, OEF Camouflage, X-Small
8415–01–580–4836—Shirt, Combat, Flame Resistant, OEF Camouflage, Small
8415–01–580–4853—Shirt, Combat, Flame Resistant, OEF Camouflage, Medium
8415–01–580–4856—Shirt, Combat, Flame Resistant, OEF Camouflage, Large
8415–01–580–4863—Shirt, Combat, Flame Resistant, OEF Camouflage, X-Large
8415–01–580–4865—Shirt, Combat, Flame Resistant, OEF Camouflage, XX-Large
8415–01–580–4870—Shirt, Combat, Flame Resistant, OEF Camouflage, XXX-Large
Mandatory Source of Supply: Alphapointe, Kansas City, MO; Goodwill Industries of South Florida, Inc., Miami, FL; Mount Rogers Community Services Board, Wytheville, VA; San Antonio Lighthouse for the Blind, San Antonio, TX; Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY; Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: W6QK ACC–APG NATICK, NATICK, MA
NSN(s)—Product Name(s):
MR 1013—Set, Dustpan and Broom, Long Handle
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Defense Commissary Agency, Fort Lee, VA
NSN(s)—Product Name(s):
MR 388—Lint Roller
MR 389—Lint Roller Refill
Mandatory Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
MR 1011—Mini Duster, Chenille Microfiber, Red
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency

Services

Service Type: Base Supply Center
Mandatory for: US Air Force, Elmendorf AFB, Joint Base Elmendorf-Richardson, AK
Mandatory Source of Supply: RLCB, Inc., Raleigh, NC
Contracting Activity: Federal Acquisition Service, GSA/FAS
Service Type: Recycling Service
Mandatory for: Scott Air Force Base (Basewide): 375th CONS/LGC 201 E Winters Street, Bldg. 50, Scott AFB, IL
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: Dept of the Air Force, FA4407 375 CONS LGC
Service Type: Grounds Maintenance
Mandatory for: DC Air National Guard, Andrews AFB, MD
Mandatory Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK

Michael R. Jurkowski,
Deputy Director, Business & PL Operations.

[FR Doc. 2020–16088 Filed 7–23–20; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* August 23, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/5/2020, 6/12/2020 and 6/19/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type: Laundry Service
Mandatory for: U.S. Navy, Navy Medicine Readiness and Training Unit, Naval Support Activity Mid-South, Millington, TN
Mandatory Source of Supply: Wiregrass Rehabilitation Center, Inc., Dothan, AL
Contracting Activity: Dept of the Navy, Naval Hospital Pensacola FL
Service Type: Janitorial Service
Mandatory for: U.S. Army Engineer District San Francisco, Bay Model Visitor Center and Baseyard Building, Sausalito, CA
Mandatory Source of Supply: North Bay Rehabilitation Services, Inc., Rohnert Park, CA
Contracting Activity: Dept of the Army, W075 Endist San Fran
Service Type: Custodial Service
Mandatory for: FAA, Cheyenne System Support Center, Cheyenne, WY
Mandatory Source of Supply: Northwest Community Action Programs of Wyoming, Inc., Worland, WY
Contracting Activity: Federal Aviation Administration, 697DCK Regional Acquisitions SVCS
Service Type: Janitorial & Grounds Service
Mandatory for: FAA, Air Traffic Control Tower, Teterboro, NJ
Mandatory Source of Supply: Fedcap Rehabilitation Services, Inc., New York, NY
Contracting Activity: Federal Aviation Administration, 697DCK Regional Acquisitions SVCS
Service Type: Grounds Maintenance
Mandatory for: FAA, Charlotte Air Traffic Control Tower, Charlotte, NC
Mandatory Source of Supply: The Charles Lea Center, Inc., Spartanburg, SC
Contracting Activity: Federal Aviation Administration, 697DCK Regional Acquisitions SVCS

Deletions

On 6/19/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletion from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

NSN(s)—Product Name(s):
7930–01–555–2897—Degreaser, Biorenewable, Industrial Strength, 5 gl
Mandatory Source of Supply: VisionCorps, Lancaster, PA
Contracting Activity: GSA/FSS Greater Southwest Acquisiti, Fort Worth, TX

Michael R. Jurkowski,
Deputy Director, Business & PL Operations.

[FR Doc. 2020–16089 Filed 7–23–20; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, July 29, 2020; 1:30 p.m.

PLACE: via Teleconference.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Staff will brief the Commission on the status of a compliance program.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7479.

Dated: July 22, 2020.

Alberta E. Mills,
Secretary.

[FR Doc. 2020–16234 Filed 7–22–20; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of Army

Draft Environmental Impact Statement and Draft Finding of No Practicable Alternative for Implementation of Area Development Plan at Davison Army Airfield, Fort Belvoir, Virginia

AGENCY: Department of Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The Department of Army (Army) announces the availability of the Draft Environmental Impact Statement (EIS) for the proposed implementation of an Area Development Plan (ADP) for Davison Army Airfield (DAAF) at Fort Belvoir, Virginia. In accordance with the National Environmental Policy Act (NEPA), the Draft EIS analyzes the potential environmental impacts associated with implementing the construction, modernization, and demolition projects at DAAF recommended in the ADP (Proposed Action). A Draft Finding of No Practicable Alternative (FONPA) addressing potential impacts on floodplains and wetlands is also available for comment with the Draft EIS.

DATES: Comments must be received by September 8, 2020.

ADDRESSES: Please send written comments to: Fort Belvoir Directorate of Public Works, Environmental Division (DPW–ED), RE: DAAF ADP EIS 9430, Jackson Loop, Suite 200, Fort Belvoir, Virginia 22060–5116. Comments may also be provided via email to: *usarmy.belvoir.imcom-atlantic.mbx.enrd@mail.mil*

FOR FURTHER INFORMATION CONTACT: Nicola Cowen via phone at (703) 806–0054 or (703) 473–9231, during normal working business hours, Monday through Friday, 8:00 a.m. to 4:00 p.m. Further information may also be requested via email to: *usarmy.belvoir.imcom-atlantic.mbx.enrd@mail.mil.*

SUPPLEMENTARY INFORMATION: The Proposed Action would be implemented over an approximately 30-year time period to provide facilities and infrastructure necessary to support the ongoing and future missions of the airfield's tenants. The Proposed Action would improve the airfield's functional layout, demolish and replace aging facilities and infrastructure, and address multiple operational safety concerns along the runway. The ADP is specific to DAAF and all projects would occur entirely within its boundaries. No substantial changes in missions, air

operations, or the number of aircraft and personnel at DAAF would occur under the Proposed Action.

The Draft EIS analyzes the potential environmental impacts of the Proposed Action, to implement the construction, modernization, and demolition projects recommended in the ADP. The Proposed Action would occur entirely within the 673-acre DAAF property on Fort Belvoir. Up to 24 ADP projects would be implemented in three sequential phases over the course of an approximately 30-year time period, as follows: Short-range (next 10 years), mid-range (11 to 20 years from now), and long-range (21 to 30 years from now). No substantial changes in missions, air operations, or the number of aircraft and personnel at DAAF would occur under the Proposed Action. Operational noise levels following implementation of the Proposed Action would remain similar to current conditions.

The Proposed Action includes the construction of new hangars, and administrative and operational facilities; the modernization of existing facilities; the demolition of up to 37 existing buildings and structures; and related infrastructure improvements. Demolition activities would remove a number of facilities that partially obstruct the airfield's Primary and Transitional Surfaces, which are required to be free of obstructions in accordance with Department of Defense (DoD) operational safety criteria. These facilities require temporary safety waivers to operate.

The Draft EIS assesses the direct, indirect, and cumulative potential environmental impacts associated with the Proposed Action. The Army evaluated several alternatives for the Proposed Action before selecting two alternatives for detailed analysis in the Draft EIS: The Full Implementation Alternative and the Partial Implementation Alternative. A No Action Alternative was also carried forward for analysis in the Draft EIS.

The Full Implementation Alternative would implement the complete suite of 24 projects recommended in the DAAF ADP. Up to 37 existing buildings and structures on DAAF would be demolished to remove facilities determined to be unnecessary, inadequate, or redundant. This would include the demolition of all facilities partially obstructing the airfield's Primary and Transitional Surfaces as described above. The Full Implementation Alternative would accommodate the space and functional needs of all DAAF tenants consistent with applicable DoD requirements. It would also fulfill DAAF's vision to create a safe, secure, sustainable, and consolidated aviation complex.

The Partial Implementation Alternative would implement a modified, reduced program of 15 ADP projects at DAAF. This Alternative would amount to implementing all of the short-range and most of the mid-range projects; none of the long-range projects would be implemented. A total of 24 existing buildings and structures at DAAF would be demolished, including all but two facilities within the airfield's Primary and Transitional Surfaces. These facilities would continue to operate under temporary safety waivers for the foreseeable future. The Partial Implementation Alternative would not address DAAF's tenants' requirements in full, but would substantially improve conditions.

Under the No Action Alternative, the Army would not implement the DAAF ADP; existing conditions at the airfield would continue for the foreseeable future. None of the proposed construction, modernization, demolition, and infrastructure improvement projects would occur. Facilities within the airfield's Primary and Transitional Surfaces would continue to require temporary safety waivers to operate. The No Action Alternative did not meet the screening criteria developed by the Army, but was carried forward for analysis in the Draft EIS to provide a baseline against which impacts of the Full and Partial Implementation Alternatives could be measured.

Natural resources on DAAF include those associated with Accotink Creek, a tributary of the Potomac River that traverses the northern side of the airfield property. Both the Full Implementation Alternative and Partial Implementation Alternative would impact some environmental resources at DAAF, including the 100-year floodplain, waters of the U.S. (including wetlands), and Chesapeake Bay Resource Protection Areas. Accordingly, the Army has also prepared a Draft Finding of No Practicable Alternative (FONPA) to comply with Executive Order (E.O.) 11988, *Floodplain Management* and E.O. 11990, *Protection of Wetlands.* As described in the Draft EIS, management measures would be implemented to avoid or minimize less than significant adverse impacts on these resources. The Draft EIS identifies ''significant'' adverse effects on waters of the U.S., including wetlands from the Full and Partial Implementation Alternatives. Adherence to applicable permitting requirements would mitigate these impacts to the extent possible.

All government agencies, special interest groups, and individuals are invited to participate in the Army's decision-making process for the subject Proposed Action. A 45-day public review period for the Draft EIS and Draft FONPA will begin on July 24, 2020. Interested parties will also be invited to attend two public telephone meetings scheduled for August 24, 2020. Due to the COVID–19 Pandemic and the need to maintain social distancing, all public meeting materials will be provided online, and the public meeting will be hosted by telephone. The meeting materials can be found at *https://home.army.mil/belvoir/index.php/about/Garrison/directorate-public-works/environmental-division.* There will be two public telephone calls scheduled for August 24, 2020. The phone number for both meetings is 1–877–286–5733. The 1st meeting will be from 1:00 p.m. to 3:00 p.m., and the passcode is 676543300#. The 2nd meeting will be from 6:00 p.m. to 8:00 p.m., and the passcode is 66866226#. If you cannot access the meeting materials online, please submit a request for the meeting materials to: *usarmy.belvoir.imcom-atlantic.mbx.enrd@mail.mil.* To submit a request by mail, please submit it to see **ADDRESSES**. Mail must be postmarked not later than August 10, 2020 so the meeting materials can be sent by United States Postal Service. Notification of the public telephone meeting will be announced in the local news media and on the Fort Belvoir website listed below.

An electronic copy of the Draft EIS and Draft FONPA will be made available for view or download online at: *https://home.army.mil/belvoir/index.php/about/Garrison/directorate-public-works/environmental-division.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2020–16005 Filed 7–23–20; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0119]

Agency Information Collection Activities; Comment Request; Teacher Education Assistance for College and Higher Education Grant Eligibility Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is

proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 22, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0119. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave., SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

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: Teacher Education Assistance for College and Higher Education Eligibility Regulations.

OMB Control Number: 1845–0084.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector, Individuals or Households; State, Local and Tribal Organizations.

Total Estimated Number of Annual Responses: 233,844.

Total Estimated Number of Annual Burden Hours: 37,175.

Abstract: The TEACH Grant Program was included for review in the Negotiated Rulemaking which took place in early 2019. Section 686.32 of the TEACH Grant regulations is being updated via this information collection. The final regulations in section 686.32 revise the information that is provided to TEACH Grant recipients during initial, subsequent, and exit counseling. The final regulations also add a new conversion counseling requirement for grant recipients whose TEACH Grants are converted to Direct Unsubsidized Loans. This conversion counseling material will be provided directly to the recipient from the Department based on the last address provided by the recipient. This is a request for a revision of the existing burden hours in OMB Control Number 1845–0084 which provides for TEACH Grant counseling.

Dated: July 21, 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. 2020–16086 Filed 7–23–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0118]

Agency Information Collection Activities; Comment Request; Talent Search (TS) Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before September 22, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0118. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave, SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Antoinette Edwards, 202–377–3315.

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: Talent Search (TS) Annual Performance Report.

OMB Control Number: 1840–0826.

Type of Review: An extension of a currently approved information collection.

Respondents/Affected Public: State, Local and Tribal Organizations; Private Sector.

Total Estimated Number of Annual Responses: 473.

Total Estimated Number of Annual Burden Hours: 8,514.

Abstract: Talent Search grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collection is also aggregated to provide national information on project participants and program outcomes.

Dated: July 20, 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. 2020–16013 Filed 7–23–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0071]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Waiver Requests Related to the Adult Education and Family of Literacy Act and the Carl D. Perkins Career and Technical Education Act

AGENCY: Office of Career, Technical and Adult Education (OCTAE), 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 24, 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 Braden Goetz, 202–245–7405.

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: Waiver Requests Related to the Adult Education and Family of Literacy Act and the Carl D. Perkins Career and Technical Education Act.

OMB Control Number: 1830–0580.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Organizations.

Total Estimated Number of Annual Responses: 38.

Total Estimated Number of Annual Burden Hours: 10.

Abstract: This information collection solicits from State educational agencies requests for waivers of section 421(b) of the General Education Provisions Act (to extend the period of availability for obligation of State formula grant funds authorized by the Carl D. Perkins Career and Technical Education Act of 2006 and the Adult Education and Family Literacy Act.

Dated: July 21, 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. 2020–16090 Filed 7–23–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act, requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, August 24, 2020; 11:00 a.m. to 5:30 p.m. EDT

ADDRESSES: This meeting will be held digitally via webcast using Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the FESAC meeting website at: *https://science.osti.gov/fes/fesac/Meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Samuel J. Barish, Acting Designated Federal Officer, Office of Fusion Energy Sciences (FES); U.S. Department of Energy; Office of Science; 1000 Independence Avenue SW; Washington, DC 20585; Telephone: (301) 903–2917, Email address: *sam.barish@science.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the fusion energy sciences program.

Tentative Agenda Items:

- FES Perspective
- Update on the FESAC Subcommittee to Develop a Long-Range Plan for the FES Program
- Overview of Power Generation Investment Considerations

- Advancing Fusion with Machine Learning 2019 Workshop
- Public Comment
- Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, you should contact Dr. Barish at *sam.barish@science.doe.gov* (Email). Reasonable provision will be made to include the scheduled oral statements during the Public Comment time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days on the Fusion Energy Sciences Advisory Committee website—*http://science.energy.gov/fes/fesac/.*

Signed in Washington, DC on July 21, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–16101 Filed 7–23–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–21–000]

Notice of Availability of Draft Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 16—Part 12D Program and Request for Comments

The staff of the Office of Energy Projects (OEP) has drafted its initial version of Chapter 16—Part 12D Program of its *Engineering Guidelines for the Evaluation of Hydropower Projects* (*Guidelines*). This chapter will supersede the portions of ''Chapter 14—Dam Safety Performance Monitoring Program'' that pertain to the performance of an Independent Consultant's Safety Inspection, and is one of four draft chapters intended to provide additional guidance related to the notice of proposed rulemaking issued by the Commission in Docket No. RM20–9–000. Please note that any comments on the proposed rulemaking or on draft chapters of the *Guidelines* other than Chapter 16 should be filed in the corresponding docket number.[1]

Comments are now requested on the draft ''Chapter 16—Part 12D Program'' from federal and state agencies, licensees whose projects are subject to Part 12, Subpart D of the Commission's regulations, independent consultants and inspectors, and other interested parties with special expertise with respect to dam safety. Comments are due 60 days from the date of this Notice.

Interested parties can help us determine the appropriate updates and improvements by providing: Meaningful comments or suggestions that focus on the specific sections requiring clarification; updates to reflect current laws and regulations; or best practices related to the review, inspection, and assessment of water power projects. The more specific your comments, the more useful they will be. A detailed explanation of your submissions and/or any references of scientific studies associated with your comments will greatly help us with this process. We will consider all timely comments on the revised *Guidelines* before issuing the final version.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the docket number (AD20–21–000) on the first page of your submission. The Commission strongly encourages electronic filing.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*). Select the FERC Online option from the left-hand column and click on eComment. This is an easy method for interested persons to submit brief, text-only comments up to 6,000 characters. You must include your name and contact information at the end of your comments.

(2) You can file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*). Select the FERC Online option from the left-hand column and click on eFiling. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on eRegister. When selecting the filing type, select General, then choose Comment (on Filing, Environ. Report or Tech Conf).

(3) In lieu of electronic filing, you can mail a paper copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments, or those delivered by carriers/couriers other than the US Postal Service, should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

All information related to Chapter 16—Part 12D Program, including the draft chapter and all submitted comments, can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* AD20–21). Be sure you have selected an appropriate date range. The Commission also offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with electronic notification of these filings and direct links to the documents. Go to the Commission's website (*www.ferc.gov*), select the FERC Online option from the left-hand column, and click on eSubscription. Users must be registered in order to use eSubscription.

Information Collection Statement

The proposed *Guidelines* include information collection activities for which the Paperwork Reduction Act[2] requires approval by the Office of Management and Budget (OMB). The Commission has included the burden and cost estimates for information collection activities in these *Guidelines* in the Notice of Proposed Rulemaking titled, Safety of Water Power Projects and Project Works (Docket No. RM20–9–000). The Commission has designated the information collection activities in the proposed rule and in the *Guidelines* as FERC–517. Upon approval of FERC–517, OMB will assign an OMB Control Number and expiration date.

If you would like to submit comments on the information-collection aspects (such as burden, cost, need for the data, and frequency of reporting or recordkeeping) of the proposed *Guidelines,* please submit them to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer].

[1] The Commission is concurrently issuing for public comment four draft chapters of the *Guidelines* in Docket Nos. AD20–20–000 (Chapter 15—Supporting Technical Information Document), AD20–21–000 (Chapter 16—Part 12D Program), AD20–22–000 (Chapter 17—Potential Failure Mode Analysis), and AD20–23–000 (Chapter 18—Level 2 Risk Analysis).

[2] 44 U.S.C. 3501–3521.

Due to security concerns, comments should be sent directly to *www.reginfo.gov/public/do/PRAMain.* Comments submitted to OMB should be sent within 60 days of publication of this notice in the **Federal Register** and refer to FERC–517 and OMB Control No. 1902–TBD.

Please submit to the Commission copies of comments concerning the collection of information and the associated burden estimates (identified by Docket Nos. RM20–9–000 and AD20–21–000) by any of the three methods listed above.

For assistance with filing or any of the Commission's online systems, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8258.

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15872 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–20–000]

Notice of Availability of Draft Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 15—Supporting Technical Information Document and Request for Comments

The staff of the Office of Energy Projects (OEP) has drafted its initial version of Chapter 15—Supporting Technical Information Document of its *Engineering Guidelines for the Evaluation of Hydropower Projects* (*Guidelines*). This chapter will supersede the portions of Chapter 14—Dam Safety Performance Monitoring Program that pertain to the Supporting Technical Information Document, and is one of four draft chapters intended to provide additional guidance related to the notice of proposed rulemaking issued by the Commission in Docket No. RM20–9–000. Please note that any comments on the proposed rulemaking or on draft chapters of the *Guidelines* other than Chapter 15 should be filed in the corresponding docket number.[1]

Comments are now requested on the draft Chapter 15—Supporting Technical Information Document from federal and state agencies, licensees whose projects are subject to Part 12, Subpart D of the Commission's regulations, independent consultants and inspectors, and other interested parties with special expertise with respect to dam safety. Comments are due 60 days from the date of this Notice.

Interested parties can help us determine the appropriate updates and improvements by providing: Meaningful comments or suggestions that focus on the specific sections requiring clarification; updates to reflect current laws and regulations; or improved measures and best practices for compiling and storing project records in physical and electronic formats. The more specific your comments, the more useful they will be. A detailed explanation of your submissions and/or any references of scientific studies associated with your comments will greatly help us with this process. We will consider all timely comments on the revised *Guidelines* before issuing the final version.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the docket number (AD20–20–000) on the first page of your submission. The Commission strongly encourages electronic filing.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*). Select the FERC Online option from the left-hand column and click on eComment. This is an easy method for interested persons to submit brief, text-only comments up to 6,000 characters. You must include your name and contact information at the end of your comments.

(2) You can file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*). Select the FERC Online option from the left-hand column and click on eFiling. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on eRegister. When selecting the filing type, select General, then choose Comment (on Filing, Environ. Report or Tech Conf).

(3) In lieu of electronic filing, you can mail a paper copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments, or those delivered by carriers/couriers other than the US Postal Service, should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

All information related to Chapter 15—Supporting Technical Information Document, including the draft chapter and all submitted comments, can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* AD20–20). Be sure you have selected an appropriate date range. The Commission also offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with electronic notification of these filings and direct links to the documents. Go to the Commission's website (*www.ferc.gov*), select the FERC Online option from the left-hand column, and click on eSubscription. Users must be registered in order to use eSubscription.

Information Collection Statement

The proposed *Guidelines* include information collection activities for which the Paperwork Reduction Act[2] requires approval by the Office of Management and Budget (OMB). The Commission has included the burden and cost estimates for information collection activities in these *Guidelines* in the Notice of Proposed Rulemaking titled, Safety of Water Power Projects and Project Works (Docket No. RM20–9–000). The Commission has designated the information collection activities in the proposed rule and in the *Guidelines* as FERC–517. Upon approval of FERC–517, OMB will assign an OMB Control Number and expiration date.

If you would like to submit comments on the information-collection aspects (such as burden, cost, need for the data, and frequency of reporting or recordkeeping) of the proposed *Guidelines,* please submit them to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer]. Due to security concerns, comments should be sent directly to *www.reginfo.gov/public/do/PRAMain.* Comments submitted to OMB should be sent within 60 days of publication of this notice in the **Federal Register** and refer to FERC–517 and OMB Control No. 1902–TBD.

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[1] The Commission is concurrently issuing for public comment four draft chapters of the *Guidelines* in Docket Nos. AD20–20–000 (Chapter 15—Supporting Technical Information Document), AD20–21–000 (Chapter 16—Part 12D Program), AD20–22–000 (Chapter 17—Potential Failure Mode Analysis), and AD20–23–000 (Chapter 18—Level 2 Risk Analysis).

[2] 44 U.S.C. 3501–3521.

Please submit to the Commission copies of comments concerning the collection of information and the associated burden estimates (identified by Docket Nos. RM20–9–000 and AD20–20–000) by any of the three methods listed above.

For assistance with filing or any of the Commission's online systems, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8258.

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15868 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

Wind Wall 1 LLC	EG20–111–000
Cedar Creek II, LLC	EG20–112–000
Midlands Solar LLC	EG20–113–000
Midlands Lessee LLC	EG20–114–000
Briar Creek Solar 1, LLC	EG20–115–000
Elm Branch Solar 1, LLC	EG20–116–000
Huntley Solar, LLC	EG20–117–000
Cubico Huntley Lessee, LLC	EG20–118–000
Richmond Spider Solar LLC	EG20–119–000
Pleinmont Solar 2, LLC	EG20–120–000
Pleinmont Solar 1, LLC	EG20–121–000
Highlander Solar Energy Station 1, LLC	EG20–122–000
Highlander IA, LLC	EG20–123–000
Lone Tree Wind, LLC	EG20–124–000
Techren Solar III LLC	EG20–125–000
Techren Solar IV LLC	EG20–126–000
Mountain Breeze Wind, LLC	EG20–127–000
Assembly Solar, LLC	EG20–128–000
Bighorn Solar 1, LLC	EG20–129–000
IP Aragorn, LLC	EG20–134–000
IP Juno, LLC	EG20–135–000
IP Titan, LLC	EG20–136–000
AES ES Alamitos, LLC	EG20–137–000
Little Bear Master Tenant, LLC	EG20–139–000
Raymond Wind Farm, LLC	EG20–140–000
West Raymond Wind Farm, LLC	EG20–141–000
Boiling Springs Wind Farm, LLC	EG20–142–000
Cimarron Bend Wind Project III, LLC	EG20–143–000
Aurora Wind Project, LLC	EG20–144–000
Taygete Energy Project, LLC	EG20–145–000
Biomasseheizkraftwerk Zolling GmbH	FC20–5–000
ENGIE Kraftwerke Farge GmbH & Co KGaA	FC20–6–000
ENGIE Kraftwerke Zolling GmbH & Co KGaA	FC20–7–000
ENGIE Kraftwerke Wilhemshaven GmbH & Co KG	FC20–8–000
Power Plant Rotterdam B.V	FC20–9–000

Take notice that during the month of June 2020, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2019).

Dated: July 10, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16083 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP20–484–000 and CP20–485–000]

ANR Pipeline Company; Great Lakes Transmission Limited Partnership; Notice of Intent to Prepare an Environment Assessment for the Proposed Alberta Xpress and Lease Capacity Abandonment Projects Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Alberta Xpress Project involving construction and operation of facilities by ANR Pipeline Company (ANR) in Evangeline Parish, Louisiana, and the Lease Capacity Abandonment Project proposed by Great Lakes Transmission Limited Partnership (GLTLP), which is associated with the Alberta Xpress Project. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the

scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00pm Eastern Time on August 20, 2020.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on June 22, 2020, you will need to file those comments in Docket No. CP20–484–000 and/or CP20–485–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for these projects. State and local government representatives should notify their constituents of the proposed projects and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the projects, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

ANR provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) under the natural gas Landowner Topics link.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address using the U.S. Postal Service. Be sure to reference the project docket number (CP20–484–000 and/or CP20–485–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent through carriers other than the U.S. Postal Service must be sent to 12225 Wilkins Avenue, Rockville, Maryland 20852 for processing.

Summary of the Proposed Project

CP20–484–000

ANR proposes to construct and operate one new greenfield compressor station (designated as the Turkey Creek Compressor Station) in Evangaline Parish, Louisiana and acquire a lease between ANR and GLTLP. ANR has executed binding precedent agreements with two shippers to provide 165,000 Dekatherms per day.

The Alberta Xpress Project would consist of one new compressor station, which would include the following facilities:

- One 15,900 ISO horsepower gas-fired turbine compressor;
- three inlet filter separators;
- three discharge gas cooling bays;
- 36-inch-diameter suction and discharge piping;
- 16-inch-diameter cold recycle valves and piping;
- 16-inch-diameter unit control valve and bypass piping; and
- related appurtenant facilities.

The general location of the project facilities is shown in appendix 1.[1]

CP20–485–000

GTLP proposes to abandon firm capacity by a lease agreement with ANR. No new construction is proposed as part of the Lease Capacity Abandonment Project; however, this is related to the application filed by ANR to construct and operate the Alberta Xpress Project.

Land Requirements for Construction

Construction of the proposed ANR facilities would require the use of 23.7 acres of land during construction, resulting in both temporary and permanent impacts. Following construction, ANR would maintain about 12.3 acres associated with the installation of the proposed aboveground facilities, including foundation or impervious surfaces within the footprint of the proposed Turkey Creek Compressor Station. ANR would restore the remaining acreage following construction and allow it to revert to former uses.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- air quality and noise;

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

- public safety; and
- cumulative impacts

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of these projects to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the projects' potential effects on historic properties.[4] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the projects is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP20–484 or CP20–485). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: July 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16087 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD20–4–000]

Commission Information Collection Activities (FERC–725A, FERC–725D, FERC–725F, FERC–725G, FERC–725L, and FERC–725Z); Comment Request; Revision

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of revised information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on revisions to the information collections, FERC–725A (Mandatory Reliability Standards for the Bulk-Power System), FERC–725D (Facilities Design, Connections and Maintenance Reliability Standards), FERC–725F (Mandatory Reliability Standard for Nuclear Plant Interface Coordination), FERC–725G (Reliability Standards for the Bulk Power System: PRC Reliability Standards), FERC–725L (Mandatory Reliability Standards for the Bulk-Power System: MOD Reliability Standards), and FERC–725Z (Mandatory Reliability Standards: IRO Reliability Standards), in Docket No. RD20–4–000 and will be submitting them to the Office of Management and Budget (OMB) for review of the respective information collection requirements.

DATES: Comments on the collections of information are due September 22, 2020.

ADDRESSES: You may submit comments identified by Docket No. RD20–4–000 by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.
- Effective 7/1/2020, delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Titles: FERC–725A, Mandatory Reliability Standards for the Bulk-Power System; FERC–725D, Facilities Design, Connections and Maintenance Reliability Standards; FERC–725F, Mandatory Reliability Standard for Nuclear Plant Interface Coordination; FERC–725G, Reliability Standards for the Bulk Power System: PRC Reliability Standards; FERC–725L, Mandatory Reliability Standards for the Bulk-Power System: MOD Reliability Standards; and FERC–725Z, Mandatory Reliability Standards: IRO Reliability Standards.

OMB Control Nos.: 1902–0244 (FERC–725A); 1902–0247 (FERC–725D); 1902–0249 (FERC–725F); 1902–0252 (FERC–725G); 1902–0261 (FERC–725L); and 1902–0276 (FERC–725Z)

Type of Request: Revisions to FERC–725A, FERC–725D, FERC–725F, FERC–725G, FERC–725L, and FERC–725Z information collection requirements, as discussed in Docket No. RD20–4–000.

Abstract: The North American Electric Reliability Corporation (NERC) filed a petition to modify seven Reliability Standards.

On February 21, 2020, NERC filed a petition in Docket No. RD20–4–000 [1] requesting Commission approval of:

- Reliability Standard TOP–003–4 (Operational Reliability Data),
- Reliability Standard FAC–002–3 (Facility Interconnection Studies),
- Reliability Standard NUC–001–4 (Nuclear Plant Interface Coordination),
- Reliability Standard PRC–006–4 (Automatic Underfrequency Load Shedding),
- Reliability Standard MOD–031–3 (Demand and Energy Data),
- Reliability Standard MOD–033–2 (Steady-State and Dynamic System Model Validation), and
- Reliability Standard IRO–010–3 (Reliability Coordinator Data Specification and Collection)

NERC is requesting approval of the seven proposed Reliability Standards pursuant to Section 215(d)(1) of the Federal Power Act (''FPA'') [2] and § 39.5 [3] of the Federal Energy Regulatory Commission's (''FERC'' or ''Commission'') regulations. The revisions in the proposed Reliability Standards will align these standards with the previously-approved changes to the NERC registration criteria [4] by removing reference to entities [5] that are no longer registered with NERC. In proposed Reliability Standard PRC–006–4, NERC adds the UFLS-only Distribution Provider as an applicable entity. In two instances, NERC has proposed changes that will promote consistent use of the term Planning Coordinator across the Reliability Standards.[6]

The Commission's request to OMB will reflect the following:

- Elimination of the burden associated with the load-serving entity (LSE) function in Requirement R5 of proposed Reliability Standard TOP–003–4.[7] The petition states that the currently effective standard is applicable to the transmission operator, balancing authority, generator owner, generator operator, load-serving entity, transmission owner, and distribution provider. As the load-serving entity is no longer a NERC registration category, NERC proposes to remove this entity from the applicability section of proposed Reliability Standard TOP–003–4 and remove reference to this entity in Requirement R5.[8]
- Elimination of the burden associated with the load-serving entity (LSE) function in Requirement R3 of proposed Reliability Standard FAC–002–3.[9] The NERC petition states as the load-serving entity is no longer a NERC registration category, NERC proposes to remove this entity from the applicability section of proposed Reliability Standard FAC–002–3 and remove reference to this entity in Requirement R3.[10]
- Removal of the load-serving entity (LSE) function in the applicability section of proposed Reliability Standard NUC–001–4.[11] The NERC petition states as the load-serving entity is no longer a NERC registration category, NERC proposes to remove this entity from the list of applicable transmission entities in the applicability section of proposed Reliability Standard NUC–001–4.[12] Removing this function from the list of transmission entities will not change the estimated burden associated with this standard.
- Addition of the burden associated with UFLS-only distribution providers to proposed Reliability Standard PRC–006–4.[13] The petition states that the currently effective standard is applicable to planning coordinators, ''UFLS entities'' (which may include transmission owners and distribution providers that own, operate, or control UFLS equipment), and transmission owners that own certain elements. In proposed Reliability Standard PRC–006–4, NERC proposes to add the UFLS-only distribution provider as an applicable UFLS entity.[14]
- Elimination of the burden associated with the load-serving entity (LSE) function in Requirement R1 of proposed Reliability Standard MOD–031–3.[15] The NERC petition states as the load-serving entity is no longer a NERC registration category, NERC proposes to remove this entity from the applicability section of proposed Reliability Standard MOD–031–3 and remove reference to this entity in Requirement R1, Part 1.1, where it is listed as an ''Applicable Entity'' for purposes of Requirements R2 and R4.[16]

[1] The petition and exhibits are posted in the Commission's eLibrary system in Docket No. RD20–4–000 (Standards Alignment with Registration Petition).

[2] 16 U.S.C. 824o (2018).

[3] 18 CFR 39.5 (2019).

[4] *Order on Electric Reliability Organization Risk Based Registration Initiative and Requiring Compliance Filing,* 150 FERC ¶ 61,213 (2015); *Order on Compliance Filing,* 153 FERC ¶ 61,024 (2015).

[5] NERC's risk-based registration initiative resulted in the removal of the load-serving entity and purchasing-selling entity from the NERC compliance registry.

[6] Standards Alignment with Registration Petition at 7.

[7] The burden associated with the current version of this standard, TOP–003–3, is included in FERC–725A.

[8] Standards Alignment with Registration Petition at 14.

[9] The burden associated with the current version of this standard, FAC–002–2, is included in FERC–725D.

[10] Standards Alignment with Registration Petition at 8.

[11] The burden associated with the current version of this standard, NUC–001–3, is included in FERC–725F.

[12] Standards Alignment with Registration Petition at 12.

[13] The burden associated with the Commission approved standard, PRC–006–2, is included in FERC–725G. The current version of this standard, PRC–006–3, was adopted by the NERC Board of Trustees on August 10, 2017. Reliability Standard PRC–006–3 was not submitted to the Commission for approval because it is identical to the Commission-approved version, PRC–006–2. The only change was a revision to the regional variance for the Quebec Interconnection and does not impact the requirements for entities in the United States.

[14] Standards Alignment with Registration Petition at 13.

[15] The burden associated with the current version of this standard, MOD–031–2, is included in FERC–725L.

[16] Standards Alignment with Registration Petition at 10.

Additionally, NERC proposes to strike the term ''Planning Authority'' from the applicability section of the standard and the explanatory text that follows. The preferred terminology for the responsible entity that coordinates and integrates transmission facilities and service plans, resource plans, and protection systems is ''Planning Coordinator.'' [17] This is a terminology change and will not result in a change in burden.

• Modification of the term ''Planning Authority'' to ''Planning Coordinator'' in proposed Reliability Standard MOD–033–2.[18] In the petition, NERC proposes to strike the term ''Planning Authority'' from the applicability section of the standard and the explanatory text that follows. The proposed change is intended to promote consistent use of ''Planning Coordinator'' throughout the Reliability Standards.[19] This is a terminology change and will not result in a change in burden.

• Elimination of the burden associated with the load-serving entity (LSE) function in Requirement R3 of proposed Reliability Standard IRO–010–3.[20] The NERC petition states as the load-serving entity is no longer a NERC registration category, NERC proposes to remove this entity from the applicability section of proposed Reliability Standard IRO–010–3 and remove reference to this entity in Requirement R3.[21]

Type of Respondents: Reliability coordinator (RC), balancing authority (BA), transmission owner (TO), transmission operator (TOP), generator owner (GO), generator operator (GOP), distribution provider (DP), UFLS-only distribution provider (UFLS-only DP), planning coordinator (PC), and transmission planner (TP).

Estimate of Annual Burden: [22] The Commission based its estimates on the NERC compliance registry as of April 10, 2020. According to the registry, there are 12 reliability coordinators, 98 balancing authorities, 314 distribution providers, 63 UFLS-only distribution providers, 973 generator owners, 916 generator operators, 321 transmission owners, 169 transmission operators, 64 planning coordinators, and 196 transmission planners in the United States. NERC registered entities can be registered as multiple functions, and the burden estimates reflect the overlapping of functions per entity respondent.

Changes Due to Docket No. RD20–4

The changes proposed in Docket No. RD20–4–000 include the removal of load-serving entity from the applicability of five Reliability Standards; addition of UFLS-only distribution provider in one Reliability Standard; and a terminology change of ''planning authority'' to ''planning coordinator'' in the applicability of two Reliability Standards. The load-serving entity function was removed from the NERC compliance registry in October 2015 as a result of the risk-based registration order.[23] Prior to the removal of the load-serving entity function, the NERC compliance registry in early 2015 included 446 registered load-serving entities, however, many of these entities were also registered as other functions and remained on the registry. NERC deregistered 63 load-serving entities from the compliance registry on October 15, 2015, coinciding with the Commission approval of NERC's risk-based registration initiative.[24]

The proposed Reliability Standard NUC–001–4 modification of removing the load-serving entity from its applicability is not a substantive change and does not require a change in burden. This is due to the current burden assumptions based on: (1) The number of nuclear plants in the United States, and (2) applicability including two transmission entities [25] for each nuclear plant. The removal of load-serving entity from the list of possible transmission entities does not change these assumptions.

The Commission staff estimates the program changes, due to Docket No. RD20–4, for the listed information collections. Because the affected Reliability Standards were implemented at various times since Order No. 693 in March 2007, using the hourly cost estimates in effect at that time, we are being conservative and not showing cost estimates for the changes.

Adjustments, Updates, and Clarification of Estimates (Not Due to Docket No. RD20–4)

In addition to the changes identified in Docket No. RD20–4–000, the Commission is updating the entire burden estimates for six of the Reliability Standards. These adjustments are warranted based on updates to the number of applicable registered entities and to ensure that the burden for each applicable function is quantified with clear granularity.

The table also includes adjustments due to normal industry fluctuations (*e.g.,* companies merging or splitting, going into or leaving the industry, or filling more or fewer roles in the NERC registry); the figures are based on the NERC registry as of April 10, 2020.

[17] Standards Alignment with Registration Petition at 10.

[18] The burden associated with the current version of this standard, MOD–033–1, is included in FERC–725L.

[19] Standards Alignment with Registration Petition at 11.

[20] The burden associated with the current version of this standard, IRO–010–2, is included in FERC–725Z.

[21] Standards Alignment with Registration Petition at 9.

[22] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[23] *Order on Electric Reliability Organization Risk Based Registration Initiative and Requiring Compliance Filing,* 150 FERC ¶ 61,213 (2015); *Order on Compliance Filing,* 153 FERC ¶ 61,024 (2015).

[24] NERC posts its list of deregistered entities at the following link. *https://www.nerc.com/pa/comp/Registration%20and%20Certification%20DL/NCR%20Deregistered%20Entities.xls.*

[25] The current Reliability Standard NUC–001–3 defines the phrase ''transmission entities'' as all entities that are responsible for providing services related to nuclear plant interface requirements (NPIRs). Such entities may include one or more of the following: transmission operators, transmission owners, transmission planners, transmission service providers, balancing authorities, reliability coordinators, planning coordinators, distribution providers, load-serving entities, generator owners, and generator operators.

PROPOSED CHANGES TO BURDEN DUE TO DOCKET NO. RD20–4–000 AND ADJUSTMENTS AND CLARIFICATIONS [26]

Reliability standard & requirements	Number of respondents & type of entity (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hrs. per response (4)	Total annual burden hours (3) * (4) = (5)
FERC–725A, OMB Control No. 1902–0244					
TOP–003–4 (Operational Reliability Data), R1–R5, & Evidence Retention—adjustment.	−3 (TOP & BA)	1	−3	230 hrs	−690 hrs.
TOP–003–4 (Operational Reliability Data), R5 &Evidence Retention—program increase [27].	1,363 (GO, GOP, TO & DP).	1	1,363	8 hrs	10,904 hrs.
Net Sub-Total for FERC–725A			1,360 (net increase)		10,214 hr. (net increase).
FERC–725D, OMB Control No. 1902–0247					
FAC–002–3 (Facility Interconnection Studies) R1 Study—adjustment.	+20 (PC & TP)	1	+20	32 hrs	640 hrs.
FAC–002–3 (Facility Interconnection Studies) R1 Evidence Retention—adjustment.	+20 (PC & TP)	1	+20	1 hr	20 hrs.
FAC–002–3 (Facility Interconnection Studies) R2–R5 Coordination—(program decrease & adjustment decrease) [28].	−93 (TO, GO & DP) [29].	1	−93	16 hrs	−1,488 hrs.
FAC–002–3 (Facility Interconnection Studies) R2–R5 Evidence Retention—(program decrease & adjustment decrease) [30].	−93(TO, GO & DP)	1	−93	1 hr	−93 hrs.
Net Sub-Total for FERC–725D			−146 (net reduction)		−921 hrs. (net reduction).
FERC–725G, OMB Control No. 1902–0252					
PRC–006–4 (Automatic Underfrequency Load Shedding) Reporting Requirement—program decrease [31].	−80 (TO & DP)	1	−80	47 hrs	−3,760 hrs.
PRC–006–4 (Automatic Underfrequency Load Shedding) Evidence Retention—program decrease [31].	−80 (TO & DP)	1	−80	5 hrs	−400 hrs.
PRC–006–4 (Automatic Underfrequency Load Shedding) R1–R7, R11–R15 Reporting Requirement—program increase & clarification [32].	64 (PC)	1	64	47 hrs	3,008 hrs.
PRC–006–4 (Automatic Underfrequency Load Shedding) R1–R7, R11–R15 Evidence Retention-program increase & clarification [32].	64 (PC)	1	64	5 hrs	320 hrs.
PRC–006–4 (Automatic Underfrequency Load Shedding) R8–R10 Evidence Retention—program increase & clarification [33].	478 (TO, DP, UFLS-only DP).	1	478	5 hrs	2,390 hrs.
Net Sub-Total for FERC–725G			446 (net increase)		1,558 hrs. (net increase).
FERC–725L, OMB Control No. 1902–0261					
MOD–031–3 (Demand and Energy Data) Develop summary in accordance w/R1, Subparts 1.5.4 and 1.5.5.—program decrease & adjustment/clarification [34].	−561 (DP, LSE, TP & BA).	1	−561	8 hrs	−4,488 hrs.
MOD–031–3 (Demand and Energy Data) Develop data request in accordance w/R1 and R3 & Evidence Retention—adjustment/clarification [35].	113 (PC & BA)	1	113	8 hrs	904 hrs.
MOD–031–3 (Demand and Energy Data) Develop and provide data in accordance w/R2 and R4 & Evidence Retention—adjustment/clarification [34].	381 (TP, BA & DP)	1	381	8 hrs	3,048 hrs.

PROPOSED CHANGES TO BURDEN DUE TO DOCKET NO. RD20–4–000 AND ADJUSTMENTS AND CLARIFICATIONS [26]—Continued

Reliability standard & requirements	Number of respondents & type of entity (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hrs. per response (4)	Total annual burden hours (3) * (4) = (5)
MOD–033–2 (Steady-State Dynamic System Model Validation) R2 Data Submittal [for R2]—adjustment.	−14 (RC & TOP) [36]	1	−14	8 hrs	−112 hrs.
MOD–033–2 (Steady-State Dynamic System Model Validation),R1–R2, Evidence Retention, adjustment.	−14 (PC, RC & TOP) [37].	1	−14	1 hr	−14 hrs.
Net Sub-Total for FERC–725L			−95 (net reduction)		−662 hrs.; (net reduction).
FERC–725Z, OMB Control No. 1902–0276					
IRO–010–3 (Reliability Coordinator Data Specification and Collection) R1–R3 Evidence Retention—adjustment.	+1 (RC)	1	1	36 hrs	+36 hrs.
IRO–010–3 (Reliability Coordinator Data Specification and Collection), R3 &Evidence Retention—adjustment/clarification [38].	1,388 (BA, GO, GOP, TOP, TO & DP).	1	1,388	8 hrs	11,104 hrs.
Net Sub-Total for FERC–725Z			1,389 (net increase)		11,140 hrs.; (net increase).
Net Total Program Changes [39]					+8,812 hrs.
Net Total Adjustments,					+12,517 hrs.
Total Net Changes (Including Program Changes and Adjustments) [39].					+21,329 hrs.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to

[26] The adjustments, due to normal industry fluctuations, are based on figures in the NERC registry as of April 10, 2020.

[27] This is not a program change (increase) due to Docket No. RD20–4. Rather, we are correcting an earlier oversight. It appears that the estimated burden figures for the GO, GOP, TO and DP were inadvertently omitted from the package submitted to and approved by OMB related to the Final Rule (Order No. 817, issued 11/19/2015) in Docket No. RM15–16. The number of respondents is the current figure based on the NERC registry.

[28] The reduction of 93 respondents and corresponding burden hours include 63 LSEs that were de-registered (program decrease of 1,008 hrs.) and an adjustment decrease of 30 respondents (480 hrs.) due to normal industry fluctuations.

Out of the total decrease of 1,488 hours, the program decrease of 1,008 hours [corresponding decrease of 63 responses] is due to Docket No. RD20–4. The reduction of 480 hours is due to normal adjustments.

[29] Although 1,232 entities are registered as TO, DP, or GO, we expect at the most 123 entities (ten percent) will seek to interconnect and go through the study phase that may require coordination in any given year.

[30] The reduction of 93 respondents and corresponding burden hours include 63 LSEs that were de-registered (program decrease of 63 hrs., due to Docket No. RD20–4) and an adjustment decrease of 30 respondents (30 hrs.) due to normal industry fluctuations.

[31] The number of entities is being reduced in order to more clearly identify the applicable entities in subsequent rows in this table. As stated in the NERC Petition, ''[t]he currently effective standard is applicable to Planning Coordinators, ''UFLS entities'' (which may include Transmission Owners and Distribution Providers that own, operate, or control UFLS equipment), and Transmission Owners that own certain Elements. In proposed Reliability Standard PRC–006–4, NERC proposes to add the UFLS-Only Distribution Provider as an applicable UFLS entity, consistent with the language in Section III(b) of Appendix 5B of the NERC Rules of Procedure (Statement of Compliance Registry Criteria) that the Reliability Standards applicable to UFLS-Only Distribution Providers includes prior effective versions of the PRC–006 standard.'' The changes are not due to Docket No. RD20–4.

[32] The increases are not due to Docket No. RD20–4. They are a program increase of 64 PCs (and the corresponding hrs.) in order to correct and clarify the estimates.

[33] The program increase is due to adding 63 UFLS-only DPs due to Docket No. RD20–4. In addition, 415 TOs and DPs were originally estimated in FERC–725A due to Order No. 693. However, the estimates and descriptions were not clearly spelled out, so we are clarifying them. As a result, there are 315 hours (63*5 hours) and the corresponding increase of 63 respondents of program increase due to Docket No. RD20–4, and 2,075 hours (415*5 hours) of increase due to adjustment.

[34] The estimates reflect a program decrease of 63 de-registered LSEs (and corresponding program decrease of 504 hrs.) related to Docket No. RD20–4, and an adjustment/clarification (decrease) of 498 DPs, TPs, and BAs (and corresponding decrease of 3,984 hrs.), not related to Docket No. RD20–4. The updated number of 381 DPs, TPs and BAs is listed in a new row clarifying their applicability with Requirements R2 and R4. Requirement R2 requires applicable entities to develop and provide data pursuant with Requirement R1.

[35] The 113 PCs and BAs were originally estimated in FERC–725A due to Order No. 693. However, the estimates and descriptions were not clearly spelled out, so we are clarifying them. [Some of this burden may still be in FERC–725A (and double counted temporarily).]

[36] The estimate is changing to 174 (from 188) due to normal industry fluctuation.

[37] The estimate is changing to 188 (from 194) due to normal industry fluctuation.

[38] The original Reliability Standard IRO–010–1a was included in Order No. 748 (Docket No. RM10–15) under FERC–725A. The burden for 11 RCs for IRO–010–2 (Order No. 817 in Docket No. RM15–16) was covered by FERC–725Z. Some of this burden may still be in FERC–725A (and double counted temporarily). This action is an adjustment and not related to Docket No. RD20–4.

[39] The net total program changes due to Docket No. RD20–4 result in a decrease of 1,260 hours and decrease of 126 respondents.

respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15977 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2444–000]

Millican Solar Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Millican Solar Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 10, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16080 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–23–000]

Notice of Availability of Draft Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 18—Level 2 Risk Analysis and Request for Comments

The staff of the Office of Energy Projects (OEP) has drafted its initial version of ''Chapter 18—Level 2 Risk Analysis'' of its *Engineering Guidelines for the Evaluation of Hydropower Projects* (*Guidelines*). This chapter is one of four draft chapters intended to provide additional guidance related to the notice of proposed rulemaking issued by the Commission in Docket No. RM20–9–000. Please note that any comments on the proposed rulemaking or on draft chapters of the *Guidelines* other than Chapter 18 should be filed in the corresponding docket number.[1]

Comments are now requested on the draft ''Chapter 18—Level 2 Risk Analysis'' from federal and state agencies, licensees whose projects are subject to Part 12, Subpart D of the Commission's regulations, independent consultants and inspectors, and other interested parties with special expertise with respect to dam safety. Comments are due 60 days from the date of this Notice.

Interested parties can help us determine the appropriate updates and improvements by providing: Meaningful comments or suggestions that focus on the specific sections requiring clarification; updates to reflect current laws and regulations; or best practices related to the identification and evaluation of risk using a semi-quantitative process. The more specific your comments, the more useful they will be. A detailed explanation of your submissions and/or any references of scientific studies associated with your comments will greatly help us with this process. We will consider all timely comments on the revised *Guidelines* before issuing the final version.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the docket number (AD20–23–000) on the first page of your submission. The Commission strongly encourages electronic filing.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*). Select the FERC Online option from the left-hand column and click on eComment. This is an easy method for interested persons to submit brief, text-only comments up to 6,000 characters. You must include your name and contact information at the end of your comments.

(2) You can file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*). Select the FERC Online option from the left-hand column and click on eFiling. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' When selecting the filing type, select ''General'', then choose ''Comment (on Filing, Environ. Report or Tech Conf).''

(3) In lieu of electronic filing, you can mail a paper copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments, or those delivered by carriers/couriers other than the US Postal Service, should be delivered to Health and Human

[1] The Commission is concurrently issuing for public comment four draft chapters of the *Guidelines* in Docket Nos. AD20–20–000 (Chapter 15—Supporting Technical Information Document), AD20–21–000 (Chapter 16—Part 12D Program), AD20–22–000 (Chapter 17—Potential Failure Mode Analysis), and AD20–23–000 (Chapter 18—Level 2 Risk Analysis).

Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

All information related to ''Chapter 18—Level 2 Risk Analysis,'' including the draft chapter and all submitted comments, can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* AD23–20). Be sure you have selected an appropriate date range. The Commission also offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with electronic notification of these filings and direct links to the documents. Go to the Commission's website (*www.ferc.gov*), select the FERC Online option from the left-hand column, and click on eSubscription. Users must be registered in order to use eSubscription.

Information Collection Statement

The proposed *Guidelines* include information collection activities for which the Paperwork Reduction Act [2] requires approval by the Office of Management and Budget (OMB). The Commission has included the burden and cost estimates for information collection activities in these *Guidelines* in the Notice of Proposed Rulemaking titled, ''Safety of Water Power Projects and Project Works'' (Docket No. RM20–9–000). The Commission has designated the information collection activities in the proposed rule and in the *Guidelines* as FERC–517. Upon approval of FERC–517, OMB will assign an OMB Control Number and expiration date.

If you would like to submit comments on the information-collection aspects (such as burden, cost, need for the data, and frequency of reporting or recordkeeping) of the proposed *Guidelines,* please submit them to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer]. Due to security concerns, comments should be sent directly to *www.reginfo.gov/public/do/PRAMain.* Comments submitted to OMB should be sent within 60 days of publication of this notice in the **Federal Register** and refer to FERC–517 and OMB Control No. 1902–TBD.

Please submit to the Commission copies of comments concerning the collection of information and the associated burden estimates (identified by Docket Nos. RM20–9–000 and AD20–23–000) by any of the three methods listed above.

For assistance with filing or any of the Commission's online systems, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8258.

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15874 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

[2] 44 U.S.C. 3501–3521.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–1027–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2020 Rose Park Meter to be effective 8/17/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5060.

Comments Due: 5 p.m. ET 7/29/20.

Docket Numbers: RP20–1028–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Range 7/17/2020 to be effective 7/17/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5178.

Comments Due: 5 p.m. ET 7/29/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16077 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2455–000]

SR Platte, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced SR Platte, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 10, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16081 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–22–000]

Notice of Availability of Draft Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 17—Potential Failure Modes Analysis and Request for Comments

The staff of the Office of Energy Projects (OEP) has drafted its initial version of ''Chapter 17—Potential Failure Modes Analysis'' of its *Engineering Guidelines for the Evaluation of Hydropower Projects* (*Guidelines*). This chapter will supersede the portions of ''Chapter 14—Dam Safety Performance Monitoring Program'' that pertain to the performance of a Potential Failure Modes Analysis (PFMA), and is one of four draft chapters intended to provide additional guidance related to the notice of proposed rulemaking issued by the Commission in Docket No. RM20–9–000. Please note that any comments on the proposed rulemaking or on draft chapters of the *Guidelines* other than Chapter 17 should be filed in the corresponding docket number.[1]

Comments are now requested on the draft Chapter 17—Potential Failure Modes Analysis from federal and state agencies, licensees whose projects are subject to Part 12, Subpart D of the Commission's regulations, independent consultants and inspectors, and other interested parties with special expertise with respect to dam safety. Comments are due 60 days from the date of this Notice.

Interested parties can help us determine the appropriate updates and improvements by providing: Meaningful comments or suggestions that focus on the specific sections requiring clarification; updates to reflect current laws and regulations; or best practices related to the identification, evaluation, and documentation of potential failure modes associated with water power projects. The more specific your comments, the more useful they will be. A detailed explanation of your submissions and/or any references of scientific studies associated with your comments will greatly help us with this process. We will consider all timely comments on the revised *Guidelines* before issuing the final version.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the docket number (AD20–22–000) on the first page of your submission. The Commission strongly encourages electronic filing.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*). Select the FERC Online option from the left-hand column and click on eComment. This is an easy method for interested persons to submit brief, text-only comments up to 6,000 characters. You must include your name and contact information at the end of your comments.

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(3) In lieu of electronic filing, you can mail a paper copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments, or those delivered by carriers/couriers other than the US Postal Service, should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

All information related to Chapter 17—Potential Failure Modes Analysis, including the draft chapter and all submitted comments, can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* AD20–22). Be sure you have selected an appropriate date range. The Commission also offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with electronic notification of these filings and direct links to the documents. Go to the Commission's website (*www.ferc.gov*), select the FERC Online option from the left-hand column, and click on eSubscription. Users must be registered in order to use eSubscription.

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If you would like to submit comments on the information-collection aspects (such as burden, cost, need for the data, and frequency of reporting or recordkeeping) of the proposed *Guidelines,* please submit them to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer]. Due to security concerns, comments should be sent directly to *www.reginfo.gov/public/do/PRAMain.* Comments submitted to OMB should be sent within 60 days of publication of this notice in the **Federal Register** and refer to FERC–517 and OMB Control No. 1902–TBD.

[1] The Commission is concurrently issuing for public comment four draft chapters of the *Guidelines* in Docket Nos. AD20–20–000 (Chapter 15—Supporting Technical Information Document), AD20–21–000 (Chapter 16—Part 12D Program), AD20–22–000 (Chapter 17—Potential Failure Mode Analysis), and AD20–23–000 (Chapter 18—Level 2 Risk Analysis).

[2] 44 U.S.C. 3501–3521.

Please submit to the Commission copies of comments concerning the collection of information and the associated burden estimates (identified by Docket Nos. RM20–9–000 and AD20–22–000) by any of the three methods listed above.

For assistance with filing or any of the Commission's online systems, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8258.

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15873 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1558–001.
Applicants: PacifiCorp.
Description: Tariff Amendment: Lincoln Solar LGIA—Deficiency dated 6/10/2020 to be effective 6/13/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5135.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2288–000.
Applicants: Tatanka Ridge Wind, LLC.
Description: Supplement to July 1, 2020 Tatanka Ridge Wind, LLC tariff filing.
Filed Date: 7/9/20.
Accession Number: 20200709–5164.
Comments Due: 5 p.m. ET 7/30/20.

Docket Numbers: ER20–2364–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–10_SA 3512 NSP–NSP FSA (J399) to be effective 6/30/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5049.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2365–000.
Applicants: Basin Electric Power Cooperative.
Description: Baseline eTariff Filing: Basin Electric Submission of Open Access Transmission Tariff and ATRR to be effective 7/10/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5055.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2366–000.
Applicants: Basin Electric Power Cooperative.
Description: Baseline eTariff Filing: Submission of Missouri Basin Power Project Agreements to be effective 7/10/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5056.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2367–000.
Applicants: Luning Energy LLC.
Description: Compliance filing: Compliance Filing—Amendment to Market-Based Rate Tariff to be effective 5/1/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5057.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2368–000.
Applicants: Basin Electric Power Cooperative.
Description: Initial rate filing: Basin Electric Submission of WestConnect Regional Point-to-Point Tariff to be effective 7/10/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5066.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2369–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2020–07–10_Attachment X True Up Filing for Pro Forma FSA and SATOA language to be effective 3/15/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5070.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2370–000.
Applicants: Basin Electric Power Cooperative.
Description: Compliance filing: Submission of Order No. 845 Compliance Filing to be effective 7/10/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5072.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2371–000.
Applicants: Interstate Power and Light Company.
Description: Section 205(d) Rate Filing: IPL–NSP Freeborn LBA Agreement to be effective 9/9/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5073.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2372–000.
Applicants: Basin Electric Power Cooperative.
Description: Baseline eTariff Filing: Basin Electric Submission of Transmission Service Agreements to be effective 7/10/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5078.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2373–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–10_SA 3049 NSP–NSP 1st Rev GIA (J399) to be effective 7/7/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5079.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2374–000.
Applicants: California Independent System Operator Corporation.
Description: Section 205(d) Rate Filing: 2020–07–10 Tariff Clarifications Filing to be effective 9/9/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5100.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2375–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: Amended UFA Atlas Solar Project TOT870 SA No. 242 to be effective 7/11/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5101.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2376–000.
Applicants: Duke Energy Indiana, LLC.
Description: Section 205(d) Rate Filing: Unexecuted Amended Interconnection Agreement DEI—Vectren to be effective 6/11/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5113.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2377–000.
Applicants: Wisconsin Electric Power Company.
Description: Section 205(d) Rate Filing: Formula Rate Update Filing for 2019 Rate Year to be effective 9/9/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5138.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2378–000.
Applicants: Otter Tail Power Company.
Description: Section 205(d) Rate Filing: Remedial Action Scheme Service Filing to be effective 9/8/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5143.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2379–000.
Applicants: Sugar Creek Wind One LLC.
Description: Baseline eTariff Filing: Market-Based Rates Tariff Application to be effective 7/15/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5144.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2380–000.
Applicants: Saint Solar, LLC.
Description: Baseline eTariff Filing: Saint Solar, LLC Application for MBR Authority to be effective 9/9/2020.

Filed Date: 7/10/20.
Accession Number: 20200710–5146.
Comments Due: 5 p.m. ET 7/31/20.

Docket Numbers: ER20–2381–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Original ISA, SA No. 5680; Queue No. AC1–120/AC1–121 to be effective 6/11/2020.
Filed Date: 7/10/20.
Accession Number: 20200710–5169.
Comments Due: 5 p.m. ET 7/31/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–45–000.
Applicants: Indianapolis Power & Light Company.
Description: Supplement to June 24, 2020 Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Indianapolis Power & Light Company.
Filed Date: 7/9/20.
Accession Number: 20200709–5032.
Comments Due: 5 p.m. ET 7/14/20.

Docket Numbers: ES20–45–000.
Applicants: Indianapolis Power & Light Company.
Description: Supplement to July 9, 2020 Supplement to Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Indianapolis Power & Light Company.
Filed Date: 7/10/20.
Accession Number: 20200710–5152.
Comments Due: 5 p.m. ET 7/15/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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 10, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15608 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2445–000]

Prineville Solar Energy LLC; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Prineville Solar Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 10, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16079 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–214–000.
Applicants: Saint Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Saint Solar, LLC.
Filed Date: 7/20/20.
Accession Number: 20200720–5075.
Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: EG20–215–000.
Applicants: Hunter Solar LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Hunter Solar LLC.
Filed Date: 7/20/20.
Accession Number: 20200720–5105.
Comments Due: 5 p.m. ET 8/10/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2039–001.
Applicants: GridLiance High Plains LLC.
Description: Compliance filing: GHP ER20–2039 Resubmission of Tariff Record to Correct eTariff Filing Issue to be effective 1/27/2020.
Filed Date: 7/17/20.
Accession Number: 20200717–5154.
Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2455–000.
Applicants: SR Platte, LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 9/18/2020.
Filed Date: 7/17/20.
Accession Number: 20200717–5148.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2456–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Mid-Atlantic Interstate Transmision submits IA SA No. 5657 to be effective 9/20/2020.

Filed Date: 7/20/20.

Accession Number: 20200720–5065.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: ER20–2457–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original ISA, Service Agreement No. 5679; Queue No. AF1–189 to be effective 6/18/2020.

Filed Date: 7/20/20.

Accession Number: 20200720–5070.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: ER20–2458–000.

Applicants: Hunter Solar LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 9/19/2020.

Filed Date: 7/20/20.

Accession Number: 20200720–5084.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: ER20–2459–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 850 to be effective 9/1/2020.

Filed Date: 7/20/20.

Accession Number: 20200720–5088.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: ER20–2460–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Section 205(d) Rate Filing: Amendment to Tri-State Rate Schedule No. 100 to be effective 2/26/2020.

Filed Date: 7/20/20.

Accession Number: 20200720–5111.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: ER20–2461–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Amendment to ISA, SA No. 5633; Queue No. AC2–088/AD1–136 (amend) to be effective 4/9/2020.

Filed Date: 7/20/20.

Accession Number: 20200720–5112.

Comments Due: 5 p.m. ET 8/10/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16082 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2448–000]

American Kings Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of American Kings Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 10, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16078 Filed 7–23–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2020–0181; FRL–10011–36–ORD]

Notice of Public Comment Period on Technical Documents for External Peer Review and the Pool of Candidate Peer Reviewers for a Report on Physiologically Based Pharmacokinetic (PBPK) Modeling for Chloroprene and a Supplemental Analysis of Metabolite Clearance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and external peer review.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 30-day public comment period on documents

associated with a Report on Physiologically Based Pharmacokinetic (PBPK) Modeling for Chloroprene and a Supplemental Analysis of Metabolite Clearance. These documents will undergo independent external scientific peer review managed by Versar (*https://www.versar.com/*), an EPA contractor. Public comments on the documents associated with the PBPK modeling will be provided to the external peer reviewers. Versar will convene a virtual meeting of the peer reviewers, which will be open to the public and include an opportunity to provide oral comments. In preparation for the external peer review, EPA is also announcing a 30-day public comment period on the pool of candidates to conduct the external peer review of the documents identified above. Versar will consider public comments on these candidates and evaluate any conflicts of interest and/or appearance of lack of impartiality, and will then select nine independent experts from the pool of 19 candidates. Information on the external peer review process, including details on how to provide comments on the proposed pool of candidates, is further described in this notice. Once complete, the final peer review report will be used to inform EPA's Reconsideration of a 2017 Request for Correction related to the Integrated Risk Information System (IRIS) assessment of chloroprene.

DATES: The 30-day public comment period on the technical documents and the list of proposed peer review candidates begins July 24, 2020 and ends August 24, 2020. Comments must be received on or before August 24, 2020.

ADDRESSES: Submit written comments to Docket ID No. EPA–HQ–ORD–2020–0181 no later than August 24, 2020. Documents associated with this peer review will be available within the docket.

Submit comments on the pool of candidate peer reviewers to Versar no later than August 24, 2020 by one of the following methods: *chloroprenePBPK@versar.com* (Subject line: Chloroprene PBPK Peer Review); or by phone (301) 304–3121 (ask for Tracey Cowen). Please be advised that public comments are subject to release under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

For information on how to submit comments on the technical documents contact: The EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For general information contact: Dahnish Shams, CPHEA; telephone: 202–564–2758; or email: *shams.dahnish@epa.gov.*

For information regarding the peer review contact: Versar at *chloroprenePBPK@versar.com* (Subject line: Chloroprene PBPK Peer Review); or by phone (301) 304–3121 (ask for Tracey Cowen).

SUPPLEMENTARY INFORMATION:

I. Background

On June 26, 2017, the U.S. EPA received a Request for Correction (RFC) provided on behalf of Denka Performance Elastomer LLC (DPE). In the RFC letter, DPE claimed that the *Toxicological Review of Chloroprene (CAS NO. 126–99–8) in Support of Summary Information on the Integrated Risk Information System (IRIS),* disseminated by EPA's Office of Research and Development (ORD) in 2010, did not reflect the ''best available science'' or ''sound and objective scientific practices'' and requested correction. On January 25, 2018, EPA concluded in response that the underlying information and conclusions presented in the IRIS chloroprene assessment are consistent with the EPA's Information Quality Guidelines and that no evidence published since the 2010 IRIS Assessment would change its conclusions. On July 23, 2018, DPE submitted a Request for Reconsideration of Denial of Request for Correction (RFR) with regard to EPA's decision, and entered into discussions with EPA to address the uncertainties identified by EPA as documented in the RFC response. Additional information regarding the chloroprene RFC/RFR can be found at: *https://www.epa.gov/quality/epa-information-quality-guidelines-requests-correction-and-requests-reconsideration#17002.* Discussions with Denka LLC (DPE) and its contractor, Ramboll, are summarized on the IRIS website (*https://cfpub.epa.gov/ncea/iris2/events.cfm#stakeholderMeetings*).

An updated PBPK model is now available in a report: ''Physiologically Based Pharmacokinetic (PBPK) Modeling for Chloroprene (Ramboll, 2020)''. This report, and a Supplemental Analysis of Metabolite Clearance (U.S. EPA, 2020), will undergo external peer review to help to inform future decisions regarding the RFR.

II. Information About this Peer Review

Versar is considering a list of candidates from which to select the independent, external, peer review panel. The List of Candidates (LoC) document has been posted to the docket at *https://www.regulations.gov* (Docket ID No. EPA–HQ–ORD–2020–0181) and is included below. After review and consideration of public comments, Versar will select from this pool the final list of nine (9) peer reviewers in a manner consistent with EPA's Peer Review Handbook 4th Edition, 2015 (EPA/100/B–15/001). Versar will independently conduct a conflict of interest (COI) screening of candidates to ensure that the selected experts have no COI. EPA will announce the peer review panel meeting date, location, and registration details, along with the final list of peer reviewers selected by Versar, at least 30 days prior to the peer review meeting, on the EPA IRIS website (*https://www.epa.gov/iris*). Teleconference and webinar information regarding this public meeting will be provided through the IRIS website (*https://www.epa.gov/iris*) and via EPA's IRIS listserv. To register for the IRIS listserv, visit IRIS website at *https://www.epa.gov/iris/forms/staying-connected-integrated-risk-information-system#connect.* Specific questions or comments on the peer review process should be directed to Versar by email: *chloroprenePBPK@versar.com* (Subject line: Chloroprene PBPK Peer Review); or by phone (301) 304–3121 (ask for Tracey Cowen). Comments or questions regarding the peer review candidates must be provided to Versar by August 24, 2020.

1. Guohua An, M.D., Ph.D., Iowa State University
2. Leslie Z. Benet, Ph.D., University of California San Francisco
3. James V. Bruckner, Ph.D., University of Georgia
4. Michael J. Daniels, Ph.D., University of Florida
5. Stephen S. Ferguson, Ph.D., National Institute of Environmental Health Sciences (NIEHS), National Toxicology Program Division (DNTP)
6. Bernard T. Golding, Ph.D., Newcastle University, UK
7. Jeffrey Heys, Ph.D., P.E., Montana State University
8. Nan-Hung Hsieh, Ph.D., Texas A&M University
9. Zhoumeng Lin, BMed, Ph.D., D.A.B.T., Kansas State University
10. Jochem Louisse, Ph.D., Wageningen Food Safety Research (WFSR), part of Wageningen University and Research, the Netherlands
11. Annie Lumen, Ph.D., Food and Drug Administration (FDA), National Center for Toxicological Research (NCTR)
12. Kenneth M. Portier, Ph.D., Independent Consultant
13. Dhaval K. Shah, Ph.D., University of Buffalo
14. Kan Shao, Ph.D., Indiana University
15. Jordan Ned Smith, Ph.D., Pacific Northwest National Laboratory (PNNL)

16. Gong Tang, Ph.D., University of Pittsburgh, Graduate School of Public Health
17. Raymond S. H. Yang, Ph.D., Colorado State University
18. Qiang Zhang, Ph.D., Emory University
19. Yiliang Zhu, Ph.D., University of New Mexico School of Medicine

III. How to Submit Technical Comments to the Docket

Please note that questions or comments regarding the peer review process, including comments on the candidate pool of peer reviewers, should be directed to *chloroprenePBPK@versar.com* (Subject line: Chloroprene PBPK Peer Review); or by phone (301) 304–3121 (ask for Tracey Cowen). Comments on the technical documents related to the PBPK modeling should be submitted to Docket ID No. EPA–HQ–ORD–2020–0181, by one of the following methods:

- *Online: https://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email: Docket_ORD@epa.gov*.
- *Fax:* 202–566–9744. Due to COVID–19, there may be a delay in processing comments submitted by fax.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752. Due to COVID–19, there may be a delay in processing comments submitted by mail.

Note: The EPA Docket Center and Reading Room is currently closed to public visitors to reduce the risk of transmitting COVID–19. Docket Center staff will continue to provide remote customer service via email, phone, and webform. The public can submit comments via *www.Regulations.gov* or email. No hand deliveries are currently being accepted.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2020–0181. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *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 *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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

Docket: Documents in the docket are listed in the *www.regulations.gov* index. 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Wayne E. Cascio,

Director, Center for Public Health & Environmental Assessment.

[FR Doc. 2020–16048 Filed 7–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2020–0183; FRL–10012–20–ORD]

Availability of the IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 30-day public comment period associated with release of the IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds. This document communicates information on the scoping needs identified by EPA program and regional offices and the IRIS Program's initial problem formulation activities. Specifically, the assessment plan outlines the objectives for the IRIS assessment and the type of evidence considered most pertinent to address the scoping needs. EPA is releasing this IRIS Assessment Plan for a 30-day public comment period in advance of a public science webinar planned for August 19, 2020. The Agency encourages the public to comment on all aspects of the assessment plan, including key science issues and identification of any new or missing studies.

DATES: The 30-day public comment period begins July 24, 2020 and ends August 24, 2020. Comments must be received on or before August 24, 2020.

ADDRESSES: The IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds will be available via the internet on the IRIS website at *https://www.epa.gov/iris/iris-recent-additions* and in the public docket at *http://www.regulations.gov,* Docket ID No. EPA–HQ–ORD–2020–0182.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; *telephone:* 202–566–1752; *facsimile:* 202–566–9744; or *email:Docket_ORD@epa.gov*.

For technical information on the IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds, contact Dr. James Avery, CPHEA; *telephone:* 202–564–1494; or *email: avery.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About IRIS Assessment Plans

EPA's IRIS Program is a human health assessment program that evaluates quantitative and qualitative information on the health effects that may result from exposure to chemicals found in the environment. Through the IRIS Program, EPA provides high quality science-based human health assessments to support the Agency's regulatory activities and decisions to protect public health. As part of scoping and initial problem formulation activities prior to the development of an assessment, the IRIS Program carries out a broad, preliminary literature survey to assist in identifying health effects that have been studied in relation to the chemical or substance of interest, as well as science issues that may need to be considered when evaluating toxicity. This information, in conjunction with scoping needs identified by EPA

program and regional offices, is used to inform the development of an IRIS Assessment Plan (IAP).

The IAP communicates the plan for developing each individual chemical assessment to the public and includes summary information on the IRIS Program's scoping and initial problem formulation activities, objectives and specific aims for the assessment, and a PECO (Populations, Exposures, Comparators, and Outcomes) for the systematic review. The PECO provides the framework for developing detailed literature search strategies and inclusion/exclusion criteria, particularly with respect to evidence stream (*e.g.,* human, animal, mechanistic), exposure measures, and outcome measures. The IAP serves to inform the subsequent development of chemical-specific systematic review protocols, which will be made available for public review.

II. Public Webinar Information

To allow for public input, EPA is convening a public webinar to discuss the IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds on August 19, 2020. Specific teleconference and webinar information regarding this public meeting will be provided through the IRIS website (*https://www.epa.gov/iris*) and via EPA's IRIS listserv. To register for the IRIS listserv, visit the IRIS website (*https://www.epa.gov/iris*) or visit *https://www.epa.gov/iris/forms/staying-connected-integrated-risk-information-system#connect*.

III. How to Submit Technical Comments to the Docket at https://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2020–0183 for IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov*.
- *Fax:* 202–566–9744. Due to COVID–19, there may be a delay in processing comments submitted by fax.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), *Mail Code:* 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752. Due to COVID–19, there may be a delay in processing comments submitted by mail.

Note: The EPA Docket Center and Reading Room is currently closed to public visitors to reduce the risk of transmitting COVID–19. Docket Center staff will continue to provide remote customer service via email, phone, and webform. The public can submit comments via *www.Regulations.gov* or email. No hand deliveries are currently being accepted.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2020–0183. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *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 *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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

Docket: Documents in the docket are listed in the *www.regulations.gov* index. 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Wayne E. Cascio,

Director, Center for Public Health & Environmental Assessment.

[FR Doc. 2020–16047 Filed 7–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2020–0368; FRL–10012–76–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is given of a proposed consent decree in *Our Children's Earth Foundation* v. *Wheeler,* No. 3:19–cv–07125 (N.D. Cal.). On October 29, 2019, Our Children's Earth Foundation filed a complaint in the United States District Court for the Northern District of California, alleging that the Administrator of the United States Environmental Protection Agency (''EPA'') failed to perform non-discretionary duties to review the existing New Source Performance Standards (''NSPS'') governing Secondary Lead Smelters (''Secondary Lead Smelters NSPS''); Lead-Acid Battery Manufacturing Plants (''Lead-Acid Battery Manufacturing NSPS''); Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (''Industrial Surface Coating of Plastic Parts for Business Machines NSPS''); and Automobile and Light Duty Truck Surface Coating Operations (''Automobile and Light Duty Truck Surface Coating Operations NSPS''), and to review the existing National Emission Standards for Hazardous Air Pollutants (''NESHAP'') governing Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards (''Dry Cleaning Facilities NESHAP''); Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (''Paint Stripping and Miscellaneous Surface Coating Operations NESHAP''), and Lead Acid Battery Manufacturing Area Sources (''Lead Acid Battery Manufacturing NESHAP''). The proposed consent decree would establish deadlines for EPA to take action on these source categories.

DATES: Written comments on the proposed consent decree must be received by August 24, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2020–0368, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov,* as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the 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: Stacey Simone Garfinkle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: (202) 564–3103; email address: *garfinkle.stacey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2020–0368) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree, and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by Our Children's Earth Foundation seeking to compel the Administrator to take action under the Clean Air Act to review, and if appropriate revise, the Secondary Lead Smelters NSPS, Lead-Acid Battery Manufacturing Plants NSPS, Industrial Surface Coating of Plastic Parts for Business Machines NSPS, and Automobile and Light Duty Truck Surface Coating Operations NSPS at least every 8 years under section 111(b)(1)(B) of the Act, and to review, and revise if necessary (taking into account developments in practices, processes, and control technologies), the Dry Cleaning Facilities NESHAP, Paint Stripping and Miscellaneous Surface Coating Operations NESHAP, and Lead Acid Battery Manufacturing NESHAP no less often than every 8 years under section 112(d)(6) of the Act.

Under the terms of the proposed consent decree, EPA shall review, and revise if necessary, the above source categories by the deadlines established in the proposed consent decree. Beginning on January 1, 2021, EPA will provide Our Children's Earth Foundation with status reports every 180 days to inform Plaintiff as to whether the Agency is making reasonable progress toward meeting the deadlines proposed in the consent decree, and whether the Agency anticipates any difficulties in meeting the deadlines with an explanation of the difficulty or difficulties.

For a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2020–0368, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. 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.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2020–16112 Filed 7–23–20; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9051–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed July 13, 2020, 10 a.m. EST Through July 20, 2020, 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice:

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200146, Draft, USA, MD, Fort Davison Army Airfield Area Development Plan, Comment Period Ends: 09/08/2020, Contact: Fort Belvoir Directorate of Public Works, Environmental Division (DPW–ED) 703–806–0020.

EIS No. 20200147, Final Supplement, NASA, CA, Final Supplemental Environmental Impact Statement for Soil Cleanup Activities at Santa Susana Field Laboratory, Review Period Ends: 08/24/2020, Contact: Peter Zorba, SSFL Project Director 202–714–0496.

EIS No. 20200148, Final, USACE, AK, Pebble Mine, Review Period Ends: 08/24/2020, Contact: Shane McCoy 907–753–2715.

Amended Notice:

EIS No. 20200060, Draft, FHWA, VA, Route 220 Martinsville Southern Connector, Comment Period Ends: 09/11/2020, Contact: Mack A Frost 804–775–3352. Revision to FR Notice Published 06/19/2020; Extending the Comment Period from 7/24/2020 to 9/11/2020.

Dated: July 20, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–16055 Filed 7–23–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA18

Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for information.

SUMMARY: The FDIC is issuing this request for information (RFI) as part of its FDiTech initiative to promote the efficient and effective adoption of technology at FDIC-supervised banks and savings associations (financial institutions), particularly at community banks, and to facilitate the supervision of technology usage at these institutions without increasing costs or regulatory burden. The FDIC is committed to increasing transparency, improving supervisory and regulatory efficiency, supporting innovation in banking, and providing opportunities for public feedback. This RFI seeks input on whether a standard-setting and voluntary-certification program could be established to support financial institutions' efforts to implement models and manage model risk by certifying or assessing certain aspects of the models themselves, and to conduct due diligence of third-party providers of technology and other services by certifying or assessing certain aspects of the third-party providers' operations or condition. The FDIC is especially interested in information on models and technology services developed and provided by financial technology companies, sometimes referred to as ''fintechs.''

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

ADDRESSES: You may submit comments, identified by RIN 3064–ZA18, by any of the following methods:

- *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the agency website.
- *Email: Comments@fdic.gov.* Include RIN 3064–ZA18 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

All comments received must include the agency name and RIN 3064–ZA18.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/*—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Alexander LePore, Jr., Senior Policy Analyst, (202) 898–7203, *alepore@fdic.gov.*

SUPPLEMENTARY INFORMATION: The FDIC is an independent Federal agency with a mission of maintaining stability and public confidence in the nation's financial system, in part by examining and supervising certain financial institutions, including for safety and soundness and consumer protection.[1] The FDIC is the primary Federal banking supervisor for more than 3,000 state-chartered banks and savings associations that are not members of the Federal Reserve System, and it conducts regular examinations of these supervised institutions.[2] Examinations include an assessment of how a financial institution manages the risks presented by its relationships with third parties.

The FDIC reviews a financial institution's management of significant third-party relationships in the context of the normal supervisory process. The FDIC examines the quality and effectiveness of an institution's risk management program as it pertains to the safety and soundness and consumer

[1] The FDIC also promotes stability and public confidence in the nation's financial system by insuring deposits and resolving failed insured depository institutions, leading sound policy development, evaluating resolution plans of the largest of institutions, and monitoring and mitigating systemic risks in the banking sector and financial system as a whole.

[2] The FDIC also has a back-up supervision and examination role with respect to approximately 2,000 insured depository institutions (pursuant to sections 8 and 10 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, 1820) for which the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System are the primary Federal regulators.

protection aspects of third-party arrangements. The FDIC also examines a financial institution to ensure that the products, services, and activities supported by a third party are safe and sound and comply with applicable laws and regulations, including those concerning consumer protection and civil rights. Reviews of third-party arrangements are also a critical area included in examinations of the trust and information technology functions.

Financial institutions often establish relationships with third parties to provide certain functions that financial institutions do not perform or to meet short-term needs that they are unable to fulfill. Therefore, financial institutions rely on third-party relationships for many different aspects of their operations, including credit management, operational risk management, valuation, and stress testing. Management is responsible for identifying and controlling risks from activities conducted by or through its financial institution, whether these risks arise from internal business activities or through arrangements with a third party.[3] These risks include those that arise from reliance on models, technologies, and other products or services provided by third parties. Model guidelines[4] describe risk management principles relating to financial institutions employing models, which are described as quantitative methods, systems, or approaches that apply statistical, economic, financial, or mathematical theories, techniques, and assumptions to process input data into quantitative estimates.[5] In general, model risk management should be commensurate with the financial institution's overall use of models, the complexity and materiality of its models, and the size and complexity of the financial institution's operations. Financial institutions also should be mindful of consumer protection risks when using third-party models or technologies, to ensure they are developed and operated in compliance with applicable consumer protection laws and regulations, which may include, for example, fair lending laws, privacy laws, and prohibitions against unfair, deceptive, or abusive acts or practices.[6]

As the financial services industry evolves, more financial institutions are using third-party models and technologies for functions that either are new or had been performed in-house in the past. The FDIC recognizes that the use of such models and technologies can assist the financial institution in providing greater benefits to consumers and increasing financial inclusion. The use of third-party models and technologies may also give the financial institution access to greater expertise or efficiency in providing a particular product or service at lower cost.

Many financial institutions, particularly community banks, have indicated to the FDIC that sometimes the costs and other resources associated with deploying models or technologies from third parties can be prohibitive. Vendors offer increasingly complex models with a range of features, and as a result, institutions may find it challenging to validate and assess such models. For example, an institution might conclude that it must hire new internal staff, retain consultants, or impose contractual obligations on the third party in order to conduct the model validation. In addition, for third-party outsourcing arrangements that support models, institutions conduct risk reviews on third-party providers. These risk reviews involve financial, operations, contract, and insurance assessments, along with assessment of other aspects of the outsourcing arrangements. Representatives of financial institutions have expressed concerns to the FDIC that the costs associated with the financial institutions' review of both models and third-party providers of models can create barriers to entry, particularly in the community banking market, by limiting the institutions' ability to effectively and timely on-board third parties and deploy new and innovative models.

The FDIC recognizes the important role that technological innovations can play in transforming the business of banking and enabling regulators to supervise more efficiently, thereby reducing regulatory burden while maintaining consumer protection and safety and soundness standards. Therefore, the FDIC is exploring opportunities to assist financial institutions in effectively complying with laws and regulations regarding management of third-party risks concerning the use of models, such as credit underwriting models. Among other things, the FDIC is considering the value of standards for assessing models. The development of relevant standards, along with the development and application of a voluntary certification process to ensure that models conform to those standards, could potentially allow for more financial institutions—particularly community banks—to engage with third parties, including fintechs; permit FDIC supervision resources to be used more efficiently and effectively; and reduce costs of doing business for financial institutions and providers of models.

The FDIC also is considering whether a voluntary certification or assessment program could support financial institutions' due diligence of third-party providers of a range of technology and other services by certifying or assessing certain aspects of the third-party providers' operations or condition. The FDIC is interested in whether there are unique elements and challenges associated with financial institutions' due diligence of third-party providers of technology and other services that would benefit from a voluntary certification or assessment program applicable to such providers. The FDIC is primarily interested in due diligence elements associated with third-party providers of technology and other services that support a financial institution's financial and banking activities, such as deposit, lending, and payment functions. The FDIC also is interested in comments regarding due diligence for other types of third-party providers, such as those providers that support the financial institution's corporate activities, including payroll and human resources. The FDIC also requests comments on what alternative steps the FDIC could pursue, other than a voluntary certification or assessment program, to support financial institutions' efforts to assess risk efficiently and effectively when contemplating new or monitoring existing relationships with third-party providers.

As part of this Request for Information, the FDIC is not considering substantive revisions to its existing

[3] Section 39 of the Federal Deposit Insurance Act requires the Federal Deposit Insurance Corporation to establish safety and soundness standards. 12 U.S.C. 1831p–1. These standards are set forth in part 364 of the FDIC Rules and Regulations. 12 CFR part 364.

[4] *See, e.g.,* Supervisory Guidance on Model Risk Management, FIL–22–2017 (June 7, 2017), Guidance for Managing Third-Party Risk, FIL–44–2008 (June 6, 2008), Interagency Guidelines Establishing Standards for Safety and Soundness, 12 CFR part 364, appendix A, and Interagency Guidelines Establishing Information Security Standards, 12 CFR part 364, appendix B.

[5] For example, financial institutions entering into a relationship with a third party to employ these models would also need to comply with section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and ensure that lending practices that are not discriminatory in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691–1691f).

[6] *See, e.g.,* Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f; Fair Credit Reporting Act, 15 U.S.C. 1681–1681x; Interagency Statement on the Use of Alternative Data in Credit Underwriting, FIL–82–2019 (Dec. 13, 2019); Interagency Fair Lending Examination Procedures (Aug. 2009); Policy Statement on Discrimination in Lending, FR Doc. No. 94–9214 (Apr. 15, 1994); Dodd-Frank Act, Title X, Subtitle C, Sec. 1036; Pub. L. 111–203 (July 21, 2010).

supervisory guidance with respect to model risk management or third-party provider risk management. However, the FDIC seeks comment on the possible changes to its supervisory guidance that would be appropriate to facilitate financial institutions' use of a voluntary certification or assessment program for conducting due diligence and ongoing monitoring of third-party providers of technology and other services, or for reviewing models or other technologies.

Standard-Setting and Certification Programs

Government and the private sector have worked together for more than a century to develop standards for use in private industry. The Federal Government has encouraged using standards developed by voluntary, consensus standard-setting bodies.[7] The typical standard-setting process involves a standard-setting organization (SSO) working with stakeholders, including government agencies, to develop a standard for a particular industry or sector of the economy. The standard is established on a voluntary, consensus-driven basis and provides guidelines for engaging in a particular process or for offering a particular service or product. Categories of common standards include product-based standards, performance-based standards, management system standards, personnel certification standards, and construction standards.

Once a standard is developed, application of a conformity assessment process provides assurance that processes, products, or services meet the requirements identified in the standard. This step is vital because creating a standard alone cannot promote (for voluntary standards) or guarantee (for mandatory standards) adherence to the standard. The conformity assessment can verify that processes, products, or services meet the specified level of quality, safety, or performance. Depending on the risks of nonconformance and the confidence level necessary, there are several ways to assess whether processes, products, or services meet a standard, from an entity's self-declaration to third-party certification, validation, verification or auditing. Accreditation by an independent body of organizations that perform conformity assessment activities provides formal recognition that the organization is competent, capable and impartial. In many ways, the assessment process is as important as setting the standard itself.

The standard-setting system in the United States is based on globally accepted principles for standards development including transparency, openness, impartiality, effectiveness, and consensus. The standard-setting process assures that:

- Information regarding standardization activities is accessible to all interested parties;
- participation is open to all stakeholders;
- all interests are balanced;
- standards respond to regulatory and market needs; and
- decisions are reached through consensus among those affected.

SSOs also strive to make standards as flexible as possible, allowing for the use of different methodologies to meet the needs of different stakeholders. Good faith efforts are made to eliminate, or at least minimize, conflict with other existing standards or rules.

SSOs often partner with government entities, academia, and industry to identify proposed solutions and work together toward a common goal. SSOs also involve consumers in the process so their needs are considered and addressed. This process results in standards that often balance regulatory and market needs, facilitate innovation, promote consumer protection, and strengthen competition.

In applying this standard-setting framework to models and third-party providers of technology and other services, financial institutions would have the ability to rely on certifications related to the third-party provider or certified models or other technology products and services. Financial institutions would not be required to use only certified third parties, models, or technologies. Instead, financial institutions would retain the flexibility to require certified third parties to meet different requirements that the financial institutions viewed as appropriate. For example, financial institutions would retain the right to request that certified third parties submit additional information for purposes of on-boarding at that financial institution consistent with the financial institution's unique use of the model or service, and consistent with applicable law and regulation.

Request for Comment

Given rapid technological developments and evolving consumer behaviors in banking, the FDIC seeks to learn more regarding the benefits and challenges of collaborating with an SSO and other stakeholders to create a standard-setting and a voluntary certification process. This certification process would potentially assist financial institutions in completing assessments or due diligence of: (1) Certain models, such as credit underwriting models, by certifying or assessing certain aspects of the models; and (2) third-party providers of technology and other services, by certifying or assessing certain aspects of the providers' operations or condition. The FDIC is interested in comments regarding initial due diligence and ongoing monitoring elements associated with third-party providers of technology and other services that support the financial institution's financial and banking activities, such as deposit, lending, and payment functions. The FDIC also is interested in comments regarding due diligence for other types of providers, such as third-party providers that support the financial institution's corporate activities, such as payroll and human resources.

Consistent with the collaborative approach to standard setting that government and the private sector have long taken, the FDIC envisions a collaboration among an SSO, the FDIC, and other stakeholders to set standards under an SSO, along with a voluntary conformity assessment process through accredited, independent certification organizations. The certification organizations would conduct conformity assessments of third-party providers that voluntarily submit required information regarding their products, services, models, or organization, with the task of determining conformance with the established standards. The FDIC is issuing this RFI to seek public input regarding all aspects of establishing an SSO, qualifying certification organizations, and implementing a voluntary conformity assessment process.

The FDIC also is considering, and seeking comment on, whether and how the FDIC's supervisory and examination efforts would need to be modified to facilitate a financial institution's use of a certified model or a certified third party of outsourced technology services.

The FDIC encourages comments from all interested parties, including but not limited to insured banks and savings associations, technology companies and fintechs, other third-party vendors and service providers, other financial institutions or companies, depositors and consumers, consumer groups, researchers, innovators, technologists, trade associations, and other members

[7] *See, e.g.,* National Technology Transfer and Advancement Act of 1995, Public Law 104–113, section 12(d) (Mar. 7, 1996); OMB Circular No. A–119 Revised, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'' (Feb. 10, 1998).

of the financial services industry. The FDIC also encourages comments from standard-setters and participants in other industries using standardization and certification processes, whether voluntary or mandatory.

The FDIC invites public comment on all aspects of the RFI, including the following questions.

General

Question 1: Are there currently operational, economic, marketplace, technological, regulatory, supervisory, or other factors that inhibit the adoption of technological innovations, or on-boarding of third parties that provide technology and other services, by insured depository institutions (IDIs), particularly by community banks?

Question 2: What are the advantages and disadvantages of establishing standard-setting and voluntary certification processes for either models or third-party providers?

Question 3: What are the advantages and disadvantages to providers of models of participating in the standard-setting and voluntary certification process? What are the advantages and disadvantages to providers of technology and other services that support the IDI's financial and banking activities of participating in the standard-setting and voluntary certification process?

Question 4: What are the advantages and disadvantages to an IDI, particularly a community bank, of participating in the standard-setting and voluntary certification process?

Question 5: Are there specific challenges related to an IDI's relationships with third-party providers of models or providers of technology and other services that could be addressed through standard-setting and voluntary certification processes for such third parties?

(1) Are there specific challenges related to due diligence and ongoing monitoring of such third-party providers?

(2) Are there specific challenges related to the review and validation of models provided by such third parties?

(3) Are there specific challenges related to information sharing or data protection?

Questions 6: Would a voluntary certification process for certain model technologies or third-party providers of technology and other services meaningfully reduce the cost of due diligence and on-boarding for:

(1) The certified third-party provider?

(2) the certified technology?

(3) potential IDI technology users, particularly community banks?

Question 7: What are the challenges, costs, and benefits of a voluntary certification program or other standardized approach to due diligence for third-party providers of technology and other services? How should the costs of operating the SSO and any associated COs be allocated (*e.g.,* member fees for SSO participation, certification fees)?

Question 8: Would a voluntary certification process undermine innovation by effectively limiting an IDI's discretion regarding models or third-party providers of technology and other services, even if the use of certified third parties or models was not required? Would IDIs feel constrained to enter into relationships for the provision of models or services with only those third parties that are certified, even if the IDIs retained the flexibility to use third parties or models that were not certified?

Question 9: What supervisory changes in the process of examining IDIs for safety and soundness or consumer protection would be necessary to encourage or facilitate the development of a certification program for models or third-party providers and an IDI's use of such a program? Are there alternative approaches that would encourage or facilitate IDIs to use such programs?

Question 10: What other supervisory, regulatory, or outreach efforts could the FDIC undertake to support the financial services industry's development and usage of a standardized approach to the assessment of models or the due diligence of third-party providers of technology and other services?

Scope

Question 11: For which types of models, if any, should standards be established and a voluntary certification process be developed? For example, is the greatest interest or need with respect to:

(1) Traditional quantitative models?

(2) anti-money laundering (AML) transaction monitoring models?

(3) customer service models?

(4) business development models?

(5) underwriting models?

(6) fraud models?

(7) other models?

Question 12: Which technical and operational aspects of a model would be most appropriate for evaluation in a voluntary certification program?

Question 13: What are the potential challenges or benefits to a voluntary certification program with respect to models that rely on artificial intelligence, machine learning, or big data processing?

Question 14: How can the FDIC identify those types of technology or other services, or those aspects of the third-party provider's condition, that are best suited for a voluntary certification program or other standardized approach to due diligence? For example, should such a certification program include an assessment of financial condition, cyber security, operational resilience, or some other aspect of a third-party provider?

SSO

Question 15: If the FDIC partnered with an SSO to set standards for due diligence and assessments of models or third-party providers of technology and other services, what considerations should be made in choosing the SSO? What benefits or challenges would the introduction of an SSO into the standard-setting process provide to IDIs, third-party providers, or consumers?

Question 16: To what extent would a standards-based approach for models or third-party providers of technology and other services be effective in an environment with rapidly developing technology systems, products, and platforms, especially given the potential need to reassess and reevaluate such systems, products, and platforms as technologies or circumstances change?

Question 17: What current or draft industry standards or frameworks could serve as a basis for a standard-setting and voluntary certification program? What are the advantages and disadvantages of such standards or frameworks? Do standards and voluntary certifications already exist for use as described herein?

Question 18: Given that adherence to SSO standards would be voluntary for third parties and for IDIs, what is the likelihood that third-party providers of models or services would acknowledge, support, and cooperate with an SSO in developing the standards necessary for the program? What challenges would hinder participation in that process? What method or approaches could be used to address those challenges?

Question 19: What is the best way to structure an SSO (*e.g.,* board, management, membership)? Alternatively, are there currently established SSOs with the expertise to set standards for models and third parties as described herein?

Question 20: To what extent should the FDIC and other Federal/state regulators play a role, if any, in an SSO? Should the FDIC and other Federal/state regulators provide recommendations to an SSO? Should the FDIC and other Federal/state regulators provide oversight of an SSO, or should another entity provide such oversight?

Certification Organizations (COs)

Question 21: What benefits and risks would COs provide to IDIs, third parties, and consumers?

Question 22: To what extent would COs be effective in assessing compliance with applicable standards in an environment with rapidly developing technology systems, products, and platforms, especially given the potential need to reassess and reevaluate such systems, products, and platforms as technologies or circumstances change?

Question 23: For model validation and testing, would COs evaluate a model based solely on reports, testing results, and other data provided by the third-party provider of the model? Or would the COs need to test the model and generate their own test results? What steps would the COs need to take to protect the intellectual property or other sensitive business data of the third party that has submitted its model to the validation process?

Question 24: If COs receives derogatory information indicating that a certified third party or certified model or technology no longer meets applicable standards, should the COs develop a process for withdrawing a certification or reassessing the certification?

(1) If so, what appeal rights should be available to the affected third party?

(2) What notification requirements should COs have for financial institutions that have relied on a certification that was subsequently withdrawn?

(3) Should the FDIC or Federal/state regulators enter information sharing agreements with COs to ensure that any derogatory information related to a certified third party or certified model or technology is appropriately shared with the COs?

Question 25: Are there legal impediments, including issues related to liability or indemnification, to the implementation of a voluntary certification program that the FDIC, other Federal/state regulators, third-party providers, and IDIs should consider?

Question 26: To what extent should the FDIC and other Federal/state regulators play a role, if any, in the identification and oversight of COs, including assessments of ongoing operations? Should the FDIC and other Federal/state regulators provide oversight of COs, or should another entity, such as an SSO, provide such oversight?

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 21, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–16058 Filed 7–23–20; 8:45 am]

BILLING CODE 6714–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2020–04; Docket No. 2020–0002; Sequence No. 24]

Office of Federal High-Performance Buildings; Green Building Advisory Committee; Updated Notification Extending Conference Calls

AGENCY: Office of Government-Wide Policy, General Services Administration (GSA).

ACTION: Updated notice extending biweekly conference calls.

SUMMARY: The General Services Administration (GSA) Office of Federal High-Performance Buildings within the Office of Government-wide Policy is announcing an amendment to notice Notice–MG–2020–02, dated January 15, 2020. The recurring, biweekly conference calls of the Green Building Advisory Committee's *Embodied Energy Task Group* will now be extended to last through November 18, 2020.

DATES: The recurring, biweekly conference calls of the Green Building Advisory Committee's *Embodied Energy Task Group* will continue on Wednesdays from 1:00 p.m. to 2:00 p.m., ET through November 18, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Bloom, Office of Federal High-Performance Buildings, Office of Government-wide Policy, General Services Administration, 1800 F Street NW, (Mail-code: MG), Washington, DC 20405, at 312–805–6799 or at *michael.bloom@gsa.gov.* Additional information about the Committee is available on-line at *http://www.gsa.gov/gbac.*

SUPPLEMENTARY INFORMATION: Notice-MG–2020–02, published at 85 FR 2425 (January 15, 2020).

Procedures for Attendance

Contact Mr. Michael Bloom at *michael.bloom@gsa.gov* to register to attend the remaining conference calls. To attend, submit your full name, organization, email address, and phone number. Requests to attend must be received by 5:00 p.m., ET, on August 3, 2020.

Authority: Section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123).

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Buildings, General Services Administration.

[FR Doc. 2020–16067 Filed 7–23–20; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''COVID–19 REVISION SUPPLEMENT APPLICATION ZHS1 HSR–0 (03) HEALTHCARE SYSTEMS & VALUE RESEARCH (HSVR).'' This SEP meeting will be closed to the public.

DATES: August 7, 2020.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20850, Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''COVID–19 REVISION SUPPLEMENT APPLICATION ZHS1 HSR–0 (03) HEALTHCARE SYSTEMS & VALUE

RESEARCH (HSVR)'' are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 20, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–16030 Filed 7–23–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Release of Unaccompanied Alien Children From ORR Custody

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 requesting expedited review of an information collection request from the Office of Management and Budget (OMB) and inviting public comments on the proposed collection. The request consists of several forms that allow the Unaccompanied Alien Children (UAC) Program to process release of UAC from ORR custody and provide services after release.

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 in this notice.

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: ACF is requesting that OMB grant a 180 day approval for this request under procedures for expedited processing. Any edits resulting from public comment will be incorporated into the submission under normal procedures.

The components of this information request include:

1. Discharge Notification (Form R–2): This instrument is used by care provider facilities to notify stakeholders of the transfer of a UAC to another care provider facility or the release of a UAC from ORR custody.

2. Notice to Immigration and Customs Enforcement (ICE) Chief Counsel—Release of Unaccompanied Alien Child to Sponsor and Request to Change Address (Form R–3): This instrument is used by care provider facilities to notify ICE Chief Counsel of the release of a UAC and request a change of address.

3. Release Request (Form R–4): This instrument is used by care provider facilities, ORR contractor staff, and ORR Federal staff to process recommendations and decisions for release of a UAC from ORR custody.

4. Safety and Well-Being Follow-Up Call Report (Form R–6): This instrument is used by care provider facilities to document the outcome of calls made to UAC and their sponsors after release to ensure the child is safe and refer the sponsor to additional resources as needed.

Respondents: ORR grantee and contractor staff; and released children and sponsors.

ANNUAL BURDEN ESTIMATES

Instrument	Annual total number of respondents	Annual total number of responses per respondent	Average burden minutes per response	Annual total burden minutes
Discharge Notification (Form R–2)	206	416	7	599,872
Notice to ICE Chief Counsel—Release of Unaccompanied Alien Child to Sponsor and Request to Change Address (Form R–3)	206	377	3	232,986
Release Request (Form R–4)	206	356	45	3,300,120
Safety and Well-Being Follow Up Call Report (R–6)	206	354	30	2,187,720
Estimated Annual Burden Total:				6,320,698

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.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno Settlement Agreement,* No. CV85–4544–RJK (C.D. Cal. 1996).

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–16053 Filed 7–23–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Services Provided to Unaccompanied Alien Children

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 requesting expedited review of an information collection request from the Office of Management and Budget (OMB) and inviting public comments on the proposed collection. The request consists of several forms that allow the Unaccompanied Alien Children (UAC) Program to provide services to UAC as required by statute and ORR policy.

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 in this notice.

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: ACF is requesting that OMB grant a 180-day approval for this request under procedures for expedited processing. Any edits resulting from public comment will be incorporated into the submission under normal procedures.

The components of this information request include:

1. *Sponsor Assessment (Form S–5):* This instrument is used by case managers to document their assessment of the suitability of a potential sponsor to provide for the safety and well-being of a UAC.

2. *Home Study Report (Form S–6):* This instrument is used by home study providers to document their assessment of a potential sponsor after performing a home site visit.

3. *New Sponsor (Form S–7):* This instrument is used by care providers to assign a potential sponsor to a UAC in the ORR database and track certain information related to the potential sponsor for safety and suitability assessment purposes. This form is currently approved under OMB Number 0970–0498.

4. *Initial Intakes Assessment (Form S–8):* This instrument is used by care providers to screen UAC for trafficking or other safety concerns, special needs, danger to self and others, medical conditions, and mental health concerns. This form is currently approved under OMB Number 0970–0498.

5. *Assessment for Risk (Form S–9):* This instrument is an assessment administered by care providers to reduce the risk that a child or youth is sexually abused or abuses someone else while in ORR custody.

6. *UAC Assessment (Form S–11):* This instrument is an assessment used by care providers to document information about the UAC that is used to inform provision of services (*e.g.,* case management, legal, education, medical, mental health, home studies), screen for trafficking or other safety concerns, and identify special needs. This form is currently approved under OMB Number 0970–0498.

7. *UAC Case Review (Form S–12):* This instrument is used by care providers to document new information obtained after completion of the UAC Assessment. This form is currently approved under OMB Number 0970–0498.

8. *Individual Service Plan (Form S–13):* This instrument is used by care providers to document all services provided to UAC. This form is currently approved under OMB Number 0970–0498.

9. *UAC Long Term Foster Care Travel Request (Form S–14):* This instrument is used by long term foster care providers to request ORR approval for a UAC to travel with their foster family outside of the local community. This form is currently approved under OMB Number 0970–0498.

10. *Child Advocate Recommendation and Appointment (Form S–15):* This instrument is used by care providers and other stakeholders to recommend appointment of a child advocate for a UAC. The child advocate contractor then enters whether a child advocate is available and ORR approves the appointment. This form is currently approved under OMB Number 0970–0498.

11. *Summary Notes:* Thirty Day Restrictive Placement Case Review (Form S–16): This instrument is used by care providers to document their 30-day review for UAC placed in a restrictive setting.

12. *UAC Case Status:* This instrument is used by care providers to monitor the status of high-level milestones in a UAC's case.

Respondents: ORR grantee and contractor staff, UAC, sponsors, and child advocates.

ANNUAL BURDEN ESTIMATES

Instrument	Annual total number of respondents	Annual total number of responses per respondent	Average burden minutes per response	Annual total burden hours
Sponsor Assessment (Form S–5)	206	327	60	67,362
Home Study Report (Form S–6)	11	364	45	3,003
New Sponsor (Form S–7)	206	327	20	22,454
Initial Intakes Assessment (Form S–8)	206	363	15	18,695
Assessment for Risk (Form S–9)	206	794	30	81,782
UAC Assessment (Form S–11)	206	369	45	57,011
UAC Case Review (Form S–12)	206	764	30	78,692
Individual Service Plan (Form S–13)	206	985	15	50,728
UAC Long Term Foster Care Travel Request (Form S–14)	30	9	15	68
Child Advocate Recommendation and Appointment (Form S–15)	206	5	15	258
Summary Notes: Thirty Day Restrictive Placement Case Review (Form S–16)	15	68	30	510
UAC Case Status	206	354	3	3,646
Estimated Annual Burden Total:				384,207

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.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno Settlement Agreement,* No. CV85–4544–RJK (C.D. Cal. 1996).

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–16050 Filed 7–23–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Placement and Transfer of Unaccompanied Alien Children Into ORR Care Provider Facilities

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 requesting expedited review of an information collection request from the Office of Management and Budget (OMB) and inviting public comments on the proposed collection. The request consists of several forms that allow the Unaccompanied Alien Children (UAC) Program to place UAC referred to federal agencies into care provider facilities and to transfer UAC within the ORR care provider network.

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 in this notice.

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: ACF is requesting that OMB grant a 180-day approval for this request under procedures for expedited processing. Any edits resulting from public comment will be incorporated into the submission under normal procedures.

The components of this information request include:

1. *Placement Authorization (Form P–1):* This instrument is used by ORR to authorize a care provider to provide care and services to UAC placed in their facility. Care providers sign the instrument to acknowledge certain responsibilities related to the care of UAC. This form is currently approved under OMB Number 0970–0498.

2. *Authorization for Medical, Dental, and Mental Health Care (Form P–2):* This instrument is used by ORR to authorize a care provider to provide medical, dental, and mental health care services to UAC placed in their facility. Care providers sign the instrument to acknowledge certain responsibilities related to the care of UAC.

3. *Notice of Placement in a Restrictive Setting (Form P–4/4s):* This instrument is used by care providers to document and inform UAC of the reason they have been placed in a restrictive setting. This form is currently approved under OMB Number 0970–0498 under the title *Notice of Placement in Secure or Staff Secure.*

4. *Long Term Foster Care Placement Memo (Form P–5):* This instrument is used by care providers to ensure continuity of services and tracking of records for UAC following transfer. This form is currently approved under OMB Number 0970–0498.

5. *Intakes Placement Checklist (Form P–7):* This instrument is used by ORR Intakes staff to determine whether initial placement in a restrictive setting is appropriate for UAC. This form is currently approved under OMB Number 0970–0498 under the title *Further Assessment Swift Track (FAST) Placement Tool.*

6. *Care Provider Checklist for Transfers to an Influx Care Facility (Form P–8):* This instrument is used by care providers to ensure that all criteria for transfer of UAC to an influx care facility have been met.

7. *Medical Checklist for Transfers (Form P–9A):* This instrument is used by care providers to ensure that UAC are medically cleared for transfer within the ORR care provider network, excluding transfer to an influx care facility.

8. *Medical Checklist for Influx Transfers (Form P–9B):* This instrument is used by care providers to ensure that UAC are medically cleared for transfer to an influx care facility.

9. *Transfer Request (Form P–10):* This instrument is used by care provider facilities, ORR contractor staff, and ORR federal staff to process recommendations and decisions for transfer of UAC within the ORR care provider network. This form is currently approved under OMB Number 0970–0498 under the title *Transfer Request and Tracking Form.*

10. *Transfer Request and Tracking Form (Form P–11):* This instrument is used by care providers to track the physical transfer of UAC and their belongings.

11. *UAC Portal Capacity Report (Form P–12):* This instrument is used by care providers and ORR to track availability of beds in care provider facilities. This form is currently approved under OMB Number 0970–0498.

12. *Add New UAC (Form P–13):* This instrument is used by federal agencies to refer UAC to ORR custody and by ORR Intakes staff to place UAC in an ORR care provider facility.

13. *Notice of Transfer to ICE Chief Counsel—Change of Address/Change of Venue (Form P–14):* This instrument is used by care providers to notify U.S. Department of Homeland Security (DHS) of the transfer of UAC within the ORR care provider network so that DHS may file a Motion for Change of Venue and/or Change of Address with the Executive Office for Immigration Review to ensure the UAC's immigration case is transferred to the local immigration court, if applicable. This form is currently approved under OMB Number 0970–0498.

Respondents: ORR grantee and contractor staff; other federal agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Annual total number of respondents	Annual total number of responses per respondent	Average burden minutes per response	Annual total burden hours
Placement Authorization (Form P–1)	206	377	1	1,294
Authorization for Medical, Dental, and Mental Health Care (Form P–2)	206	377	1	1,294
Notice of Placement in a Restrictive Setting (Form P–4/4s)	15	68	20	340
Long Term Foster Care Placement Memo (Form P–5)	30	4	15	30
Intakes Placement Checklist (Form P–7)	16	4,343	15	17,372
Care Provider Checklist for Transfers to an Influx Care Facility (Form P–8)	206	11	15	567
Medical Checklist for Transfers (Form P–9A)	206	29	5	498
Medical Checklist for Influx Transfers (Form P–9B)	206	11	10	378
Transfer Request (Form P–10)	206	39	45	6,026
Transfer Request and Tracking Form (Form P–11)	206	39	10	1,339
UAC Portal Capacity Report (Form P–12)	206	365	5	6,266
Add New UAC (Form P–13)	50	1,390	15	17,375
Notice of Transfer to ICE Chief Counsel—Change of Address/Change of Venue (Form P–14)	206	39	10	1,339
Estimated Annual Burden Total				54,117

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.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; Flores v. Reno Settlement Agreement, No. CV85–4544–RJK (C.D. Cal. 1996).

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–16043 Filed 7–23–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5439]

Euton M. Laing: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarring Euton M. Laing from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Laing was convicted of a felony under Federal law for conduct that relates to the regulation of a drug product under the FD&C Act. Dr. Laing was given notice of the proposed permanent debarment and an opportunity to request a hearing to show why he should not be debarred. As of March 11, 2020 (30 days after receipt of the notice), Dr. Laing had not responded. Dr. Laing's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is applicable July 24, 2020.

ADDRESSES: Submit applications for special termination of debarment to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, *debarments@fda.hhs.gov,* or at 240–402–8743.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act. On August 22, 2019, Dr. Laing was convicted as defined in section 306(l)(1) of the FD&C Act when judgment was entered against him in the U.S. District Court for the Western District of Kentucky, after his plea of guilty, to one count of conspiracy to distribute, with intent to defraud and mislead, misbranded drugs dispensed by Meds 2 Go, Inc in violation of sections 301(a) and 503(b)(1) of the FD&C Act (21 U.S.C. 331(a) and 353(b)(1)) and 18 U.S.C. 2 and 371, and a second count of conspiracy to distribute, with intent to defraud and mislead, misbranded drugs dispensed by Aracoma Drug Co. in violation of sections 301(a) and 503(b)(1) of the FD&C Act and 18 U.S.C. 2 and 371.

The factual basis for this conviction is as follows: As contained in the Plea Agreement filed in his case on July 17, 2018, from 2010 through at least 2011, Dr. Laing conspired with others to provide prescription drugs to Rx Limited internet customers that were misbranded within the meaning of the FD&C Act, because the drugs were prescribed without a valid prescription in violation of sections 301(a) and 503(b)(1) of the FD&C Act. The prescriptions were not valid because they were issued outside of the scope of professional practice. Specifically, the prescriptions were issued based on limited medical questionnaires and without face-to-face encounters. The misbranded prescription drugs were then dispensed by Aracoma Drug Co. and Meds 2 Go, Inc. The misbranded prescription drugs were sent to customers in various locations.

As a result of this conviction, FDA sent Dr. Laing by certified mail on February 5, 2020, a notice proposing to permanently debar him from providing services in any capacity to a person that

has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Dr. Laing was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Dr. Laing an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Dr. Laing received the proposal on February 10, 2020. Dr. Laing did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Euton M. Laing has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Euton M. Laing, is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(B) and 306(c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Euton M. Laing, in any capacity during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Laing provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications from Dr. Laing during his period of debarment, other than in connection with an audit under section 306 of the FD&C Act. Note that, for purposes of section 306 of the FD&C Act, a ''drug product'' is defined as a drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Any application by Dr. Laing for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2019–N–5439 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions may be seen in the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16046 Filed 7–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5923]

Paul J. Elmer: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Paul J. Elmer from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Elmer was convicted of a felony under Federal law for conduct that relates to the regulation of a drug product under the FD&C Act. Mr. Elmer was given notice of the proposed permanent debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of March 11, 2020 (30 days after receipt of the notice), Mr. Elmer had not responded. Mr. Elmer's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is applicable July 24, 2020.

ADDRESSES: Submit applications for special termination of debarment to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa (ELEM–4029) Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, *debarments@fda.hhs.gov,* or at 240–402–8743.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act. On September 23, 2019, Mr. Elmer was convicted as defined in section 306(*l*)(1) of the FD&C Act when judgment was entered against him in the U.S. District Court for the Southern District of Indiana to one count of conspiracy in violation of 18 U.S.C. 371, three counts of introduction of adulterated drugs into interstate commerce in violation of 21 U.S.C. 331(a), 333(a)(1), and 351, and six counts of adulterating drugs while holding for sale after shipment in interstate commerce in violation of 21 U.S.C. 331(k), 333(a)(1), and 351.

The factual basis for this conviction is as follows: as contained in in counts 1 and 3–11 of the indictment, filed on February 7, 2019, Mr. Elmer was the president and owner of Pharmakon Pharmaceuticals, Inc. (Pharmakon). Pharmakon compounded sterile drugs for public, private, and military hospitals and medical centers located throughout the United States. In that capacity Mr. Elmer conspired to defraud the United States by interfering with and obstructing, through deceitful and dishonest means, the lawful functions of FDA and to commit an offense against the United States by corruptly influencing, obstructing, and impeding, and endeavoring to influence, obstruct, and impede, the due and proper administration of the law under which a pending proceeding was being had before an agency of the United States, specifically FDA inspections of Pharmakon. Among other things, Mr. Elmer and his co-conspirators provided or directed others to provide false statements, during three inspections and in related correspondence, to FDA regarding the practices at Pharmakon. In addition, on three separate occasions Mr. Elmer introduced and delivered for introduction into interstate commerce, and caused to be introduced and delivered for introduction into interstate commerce, adulterated drugs which were adulterated because the drugs were

purported to be and represented as drugs which were recognized in an official compendium and the strength of such drugs differed from the standard set forth in such compendium: fentanyl, promethazine, and morphine sulfate. On six other occasions Mr. Elmer caused drugs, that were being held for sale after the shipment of a drug component in interstate commerce, to become adulterated because the drugs were purported to be and represented as drugs which were recognized in an official compendium and the strength of such drugs differed from the standard set forth in such compendium: midazolam, fentanyl citrate, phenylephrine, and morphine sulfate.

As a result of this conviction, FDA sent Mr. Elmer by certified mail on February 3, 2020, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Mr. Elmer was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Mr. Elmer an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Mr. Elmer received the proposal on February 10, 2020. Mr. Elmer did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Paul J. Elmer, has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Paul J. Elmer, is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(B) and 306(c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Paul J. Elmer, in any capacity during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Elmer provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications from Mr. Elmer during his period of debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act). Note that, for purposes of section 306 of the FD&C Act, a ''drug product'' is defined as a drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Any application by Mr. Elmer for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2019–N–5923 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16069 Filed 7–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1671]

Agency Information Collection Activities; Proposed Collection; Comment Request; Good Laboratory Practice for Non-Clinical Laboratory Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's good laboratory practice (GLP) regulations for nonclinical laboratory studies.

DATES: Submit either electronic or written comments on the collection of information by September 22, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 22, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 22, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets

Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1671 for ''Good Laboratory Practice (GLP) for Non-Clinical Laboratory Studies.'' 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, 240–402–7500.

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

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Good Laboratory Practice (GLP) for Non-Clinical Laboratory Studies—21 CFR part 58

OMB Control Number 0910–0119—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360b, and 360e) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the Agency issued GLP regulations for nonclinical laboratory studies in part 58 (21 CFR part 58). The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification, and include information collection provisions.

Part 58 requires testing facilities engaged in conducting toxicological studies to retain, and make available to regulatory officials, records regarding compliance with GLPs. Records are maintained on file at each testing facility and examined there periodically by FDA inspectors. The GLP regulations require that, for each nonclinical laboratory study, a final report be prepared that documents the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also require written records pertaining to: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
58.35(b)(7); Quality assurance unit	300	60.25	18,075	1	18,075
58.185; Reporting of nonclinical laboratory study results	300	60.25	18,075	27.65	499,774
Total					517,849

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
58.29(b); Personnel	300	20	6,000	.21 (13 minutes)	1,260
58.35(b)(1)–(6), and (c); Quality assurance unit	300	270.76	81,228	3.36	272,926
58.63(b) and (c); Maintenance and calibration of equipment	300	60	18,000	.09 (5 minutes)	1,620
58.81(a)–(c); SOPs	300	301.80	90,540	.14 (8 minutes)	12,676
58.90(c) and (g); Animal care	300	62.70	18,810	.13 (8 minutes)	2,445
58.105(a) and (b); Test and control article characterization	300	5	1,500	11.8	17,700
58.107(d); Test and control article handling	300	1	300	4.25	1,275
58.113(a); Mixtures of articles with carriers	300	15.33	4,599	6.8	31,273
58.120; Protocol	300	15.38	4,614	32.7	150,878
58.195; Retention of records	300	251.50	75,450	3.9	294,255
Total					786,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: July 20, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16095 Filed 7–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2015–D–3327 and FDA–2018–D–0719]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on E6(R2) Good Clinical Practice; International Council for Harmonisation; Integrated Addendum to International Council for Harmonisation E6(R1)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 24, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://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. The OMB control number for this information collection is 0910–0843. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on E6(R2) Good Clinical Practice; International Council for Harmonisation; Integrated Addendum to ICH E6(R1)

OMB Control Number 0910–0843—Extension

This information collection request supports recommendations found in the Agency guidance entitled ''E6(R2) Good Clinical Practice; Integrated Addendum to ICH E6(R1)'' (ICH E6(R2)). The guidance was originally prepared under the auspices of the International Council for Harmonisation (ICH) (formerly the International Conference on Harmonisation); it amends the ICH guidance for industry entitled ''E6 Good Clinical Practice: Consolidated Guidance'' (issued in April 1996). The guidance is intended to facilitate implementation of improved and more efficient approaches to clinical trial design, including conduct, oversight, recording, and reporting. This is intended to increase clinical trial quality and efficiency while continuing

to ensure human subject protection and reliability of trial results. Included in the guidance are additions identified as ''ADDENDUM'' and marked with vertical lines on both sides of the text.

Standards regarding electronic records and essential documents intended to increase clinical trial quality and efficiency have also been updated. The guidance is available from our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/e6r2-good-clinical-practice-integrated-addendum-ich-e6r1*.

In the **Federal Register** of September 5, 2019 (84 FR 46742), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS [1]

Guidance for industry on E6(R2) good clinical practice; International Council for Harmonisation; integrated addendum to ICH E6(R1)	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Section 5. Quality Management (including sections 5.0.1 to 5.0.7)—Developing a Quality Management System	1,457	1	1,457	60	87,420

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

Guidance for industry on E6(R2) good clinical practice; International Council for Harmonisation; integrated addendum to ICH E6(R1)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section 5.0.7. Risk Reporting—Describing the Quality Management Approach Implemented in a Clinical Trial and Summarizing Important Deviations From the Predefined Quality Tolerance Limits and Remedial Actions Taken in the Clinical Study Report	1,457	4.6	6,702	3	20,106

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS [1]

Guidance for industry on E6(R2) good clinical practice; International Council for Harmonisation; integrated addendum to ICH E6(R1)	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Section 5. Quality Management (including sections 5.0.1 to 5.0.7)—Developing a Quality Management System	423	1	423	60	25,380

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS [1]

Guidance for industry on E6(R2) good clinical practice; International Council for Harmonisation; integrated addendum to ICH E6(R1)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section 5.0.7. Risk Reporting—Describing the Quality Management Approach Implemented in a Clinical Trial and Summarizing Important Deviations From the Predefined Quality Tolerance Limits and Remedial Actions Taken in the Clinical Study Report	423	1.56	660	3	1,980

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In table 1, we estimate 1,457 sponsors of clinical trials of human drugs will develop approximately 1,457 quality management systems per year (as described in ICH E6(R2) in section 5.0, including sections 5.0.1 to 5.0.7). We assume it will take respondents 60 hours to develop and implement each quality management system, totaling 87,420 hours annually. The estimated number of sponsors who will develop a quality management system as described in ICH E6(R2) is based on the number of annual investigational new drug applications (INDs) and new drug applications (NDAs) submitted to FDA's Center for Drug Evaluation and Research. The estimated number of hours we assume it takes to develop a quality management system is based on informal interactions with industry about activities that support drug development plans.

In table 2, we estimate 1,457 sponsors of clinical trials of human drugs will describe the quality management approach implemented in a clinical trial and summarize important deviations from the predefined quality tolerance limits and remedial actions taken in the clinical study report (as described in section 5.0.7 of ICH E6(R2)). We further estimate that sponsors will submit approximately 4.6 responses per respondent and that it will take sponsors 3 hours to complete this reporting task, totaling 20,106 reporting hours annually. These estimates are based on our past experiences with INDs and NDAs.

In table 3, we estimate 423 sponsors of clinical trials of biological products will develop 423 quality management systems per year (as described in ICH

E6(R2) in section 5.0, including sections 5.0.1 to 5.0.7). We assume it will take respondents 60 hours to develop and implement each quality management system, totaling 25,380 hours annually. The estimated number of sponsors who will develop a quality management system as described in ICH E6(R2) is based on the number of annual INDs and biologics license applications (BLAs) submitted to FDA's Center for Biologics Evaluation and Research. The estimated number of hours we assume it takes to develop a quality management system is based on informal interactions with industry about activities that support drug development plans.

In table 4, we estimate 423 sponsors of clinical trials of biological products will describe the quality management approach implemented in a clinical trial and summarize important deviations from the predefined quality tolerance limits and remedial actions taken in a clinical study report (as described in section 5.0.7 of ICH E6(R2)). We further estimate that sponsors will submit approximately 660 responses per respondent and that it will take sponsors 3 hours to complete this reporting task, totaling 1,980 reporting hours annually. As described previously, these estimates are based on past experiences with INDs and BLAs submitted to FDA.

Although our estimated burden for the information collection reflects an overall decrease of 433 hours, we have increased the estimate by 861 records. We are making this adjustment based on an increase in the number of submissions we received over the last few years. We have also finalized the guidance since last OMB review, consistent with our good guidance practices regulation, which provide for public comment at any time, announcing its availability in the **Federal Register** of March 1, 2018 (83 FR 8882).

Dated: July 20, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16036 Filed 7–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4829]

Jin Su Park: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Jin Su Park for a period of 10 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Park was convicted of one felony count under Federal law for Importing Merchandise Contrary to Law, Causing an Act to be Done and of one felony count of introducing Misbranded Drugs into Interstate Commerce, causing an Act to be Done. The factual basis supporting both of Mr. Park's convictions, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Park was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of January 19, 2019 (30 days after receipt of the notice), Mr. Park had not responded. Mr. Park's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable July 24, 2020.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240 402–8743, or at *debarments@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if the FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On March 25, 2019, Mr. Park was convicted, as defined in section 306(l)(1)(B) of the FD&C Act, in the United States District Court for the Central District of California, when the court accepted his plea of guilty and entered judgment against him for the felony offenses of Importing Merchandise Contrary to Law, Causing an Act to be Done in violation of 18 U.S.C. 545, 2(b) and of Introducing Misbranded Drugs into Interstate Commerce, causing an Act to be Done in violation of 21 U.S.C. 331(a), 352, and 333(a)(2) (sections 301(a), 502, and 303(a)(2) of the FD&C Act).

The FDA's finding that debarment is appropriate is based on the felony convictions referenced herein. The factual basis for these convictions is as follows: As contained in the Plea Agreement, filed on February 7, 2019, Mr. Park did, no later than 2015, begin providing minor assistance to his long-time friend ''J.L.'' who owned and operated several companies that manufactured and distributed misbranded male sexual enhancement pills across the United States. In February 2017, J.L.'s operation was shut down after the FDA and Department of Homeland Security executed a search warrant at J.L.'s pill business as part of an investigation into J.L.'s smuggling of Tadalafil into the United States from China. Mr. Park knew that J.L. had been unlawfully selling misbranded pills containing Tadalafil and other active pharmaceutical ingredients smuggled from China. Mr. Park took approximately 14,000 male sexual enhancement pills, all containing undisclosed Tadalafil, from J.L.'s business, and stored them at Mr. Park's home. Mr. Park then set up a new company, RNG Global Management and Trading Group, Inc. (RNG). Mr. Park repackaged the 14,000 pills with new labeling that failed to disclose the presence of Tadalafil and he commenced selling the misbranded pills to various customers throughout the United States.

Furthermore, in April 2018, Mr. Park ordered, and subsequently paid for, five kilograms of Dapoxetine and five kilograms of Rhodiola rosea from suppliers in China. Mr. Park had the Chinese supplier ship five kilograms of Dapoxetine to him, through a Korean intermediary, in a parcel mislabeled as containing, ''Glass Colour Sample (Zinc Sulfide)'' to a commercial mailbox Mr. Park controlled in Michigan. Mr. Park subsequently had the same Chinese supplier ship to his Michigan mailbox the five kilograms of Rhodiola rosea, through the same Korean intermediary, in a parcel mislabeled as containing, ''Glass Colour (Zinc Sulfide) Sample.'' Mr. Park intended to use both the Dapoxetine and Rhodiola rosea in the male sexual enhancement pills he would sell.

As a result of this conviction, FDA sent Mr. Park by certified mail on December 16, 2019, a notice proposing

to debar him for two consecutive 5-year periods (10 years) from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Park's felony convictions for introducing misbranded drugs into interstate commerce and importing merchandise contrary to law were for conduct relating to the importation into the United States of any drug or controlled substance because he knew that the 14,000 pills containing Tadalafil were illegally imported, yet Mr. Park decided to repackage them and sell them to U.S. consumers. In addition, he did in fact illegally import Dapoxetine and Rhodiola rosea and intended to sell them to consumers in the United States.

In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Park's offenses, and concluded that each of these felony offenses independently warranted a 5-year period of debarment, and proposed that these debarment periods be served consecutively under section 306(c)(2)(A)(iii).

The proposal informed Mr. Park of the proposed debarment and offered Mr. Park an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Park received the proposal and notice of opportunity for a hearing on December 20, 2019. Mr. Park failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Park has been convicted of two felony counts under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that each offense should be accorded a debarment period of 5 years. Under section 306(c)(2)(A)(iii) of the FD&C Act, in the case of a person debarred for multiple offenses, FDA shall determine whether the periods of debarment shall run concurrently or consecutively. FDA has concluded that the 5-year period of debarment for each of the two offenses of conviction will be served consecutively, resulting in a total debarment period of 10 years.

As a result of the foregoing finding, Mr. Park is debarred for a period of 10 years from importing or offering for import any drug into the United States, effective (see DATES). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Park is a prohibited act.

Any application by Mr. Park for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2019–N–4829 and sent to the Dockets Management Staff (see **ADDRESSSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *http://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16085 Filed 7–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1119]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 24, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://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. The OMB control number for this information collection is 0910–0037. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers 21 CFR 108.25 and 108.35, and 21 CFR parts 113 and 114

OMB Control Number 0910–0037—Extension

Section 402 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342) deems a food to be adulterated, in part, if the food bears or contains any poisonous or deleterious substance that may render it injurious to health. Section 301(a) of the FD&C Act (21 U.S.C. 331(a)) prohibits the introduction or delivery for introduction into interstate commerce of adulterated food. Under section 404 of the FD&C Act (21 U.S.C. 344), our regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures, and to permit us to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* need to be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing

procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, our regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with us using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(1) (21 CFR 108.25(c)(1) and 108.35(c)(1)). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Forms FDA 2541d, FDA 2541e, and FDA 2541f for all methods except aseptic processing, or Form FDA 2541g for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms also must document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§ 113.60(c)) (thermally processed foods) and § 114.80(b) (acidified foods).

The records of processing information are periodically reviewed during factory inspections by FDA to verify fulfillment of the requirements in parts 113 or 114. Scheduled thermal processes are examined and reviewed to determine their adequacy to protect public health. In the event of a public health emergency, records are used to pinpoint potentially hazardous foods rapidly and thus limit recall activity to affected lots.

As described in our regulations, processors may obtain the paper version of Forms FDA 2541, FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g by contacting us at a particular address by visiting *https://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/ucm2007436.htm*. Processors mail completed paper forms to us. However, processors who are subject to § 108.25 and/or § 108.35 have an option to submit Forms FDA 2541, FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g electronically.

Although we encourage commercial processors to use the electronic submission system for plant registration and process filing, we will continue to make paper-based forms available. To standardize the burden associated with process filing, regardless of whether the process filing is submitted electronically or using a paper form, we are offering the public the opportunity to use four forms, each of which pertains to a specific type of commercial processing and is available both on the electronic submission system and as a paper-based form. The electronic submission system and paper-based form ''mirror'' each other to the extent practicable. The four process filing forms are as follows:

- Form FDA 2541d (Food Process Filing for Low-Acid Retorted Method);
- Form FDA 2541e (Food Process Filing for Acidified Method);
- Form FDA 2541f (Food Process Filing for Water Activity/Formulation Control Method); and
- Form FDA 2541g (Food Process Filing for Low-Acid Aseptic Systems).

At this time, the paper-based versions of the four forms and their instructions are all available for review at *https://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/ucm2007436.htm*.

Description of Respondents: The respondents to this information collection are commercial processors and packers of acidified foods and thermally processed low-acid foods in hermetically sealed containers.

In the **Federal Register** of April 3, 2020 (85 FR 18995), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response [2]	Total hours
108.25(c)(1) and 108.35(c)(1); Food canning establishment registration	2541	645	1	645	0.17 (10 minutes)	110
108.25(c)(2); Food process filing for acidified method	2541e	726	11	7,986	0.33 (20 minutes)	2,659
108.35(c)(2); Food process filing for low-acid retorted method	2541d	336	12	4,032	0.33 (20 minutes)	1,343
108.35(c)(2); Food process filing for water activity/formulation control method	2541f	37	6	222	0.33 (20 minutes)	74
108.35(c)(2); Food process filing for low-acid aseptic systems	2541g	42	22	924	0.75 (45 minutes)	693
108.25(d); 108.35(d) and (e); Report of any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce	N/A	1	1	1	4	4

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section; activity	FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response [2]	Total hours
Total						4,883

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The calculation for 20 minutes uses 0.333 hour.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. We base our estimate of the number of respondents in table 1 on registrations, process filings, and reports received. The hours per response reporting estimates are based on our experience with similar programs and information received from industry. The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is minimal because notification of spoilage, process deviation, or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. We estimate that we will receive one report annually under §§ 108.25(d) and 108.35(d) and (e). The report is expected to take 4 hours per response, for a total of 4 hours.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
108, 113, and 114	10,392	1	10,392	250	2,598,000

[1] here are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of 10,392 recordkeepers in table 2 on the number of registered firms, excluding firms that were inactive or out of business, yet still registered. We estimate that 10,392 firms will each expend approximately 250 hours per year to fully satisfy the recordkeeping requirements in parts 108, 113 and 114, for a total of 2,598,000 hours.

Finally, our regulations require that processors mark thermally processed low-acid foods in hermetically sealed containers (§ 113.60(c)) and acidified foods (§ 114.80(b)) with an identifying code to permit lots to be traced after distribution. No burden has been estimated for the third-party disclosure requirements in §§ 113.60(c) and 114.80(b) because the coding process is done as a usual and customary part of normal business activities. Coding is a business practice in foods for liability purposes, inventory control, and process control in the event of a problem. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: July 20, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16037 Filed 7–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5969]

John Seil Lee: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring John Seil Lee for a period of 10 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Lee was convicted of one felony count under Federal law for conspiracy to import merchandise contrary to law and to defraud the United States and of one felony count under Federal law for importing merchandise contrary to law. The factual basis supporting both of Mr. Lee's convictions, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Lee was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of March 15, 2020 (30 days after receipt of the notice), Mr. Lee had not responded. Mr. Lee's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable July 24, 2020.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa (ELEM–4029), Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On August 20, 2019, Mr. Lee was convicted, as defined in section 306(*l*)(1)(A) of the FD&C Act, in the U.S. District Court for the Central District of California, when the court accepted his plea of guilty and entered judgment against him for the felony offenses of conspiracy to commit offense or to defraud the United States in violation of 18 U.S.C. 371 and smuggling goods into

the United States; principals in violation of 18 U.S.C. 545 and 2(b).

FDA's finding that debarment is appropriate is based on the felony convictions referenced herein. The factual basis for these convictions is as follows: As contained in count 1 of the information in Mr. Lee's case, filed on January 7, 2019, to which Mr. Lee pleaded guilty, between 2011 and 2017 Mr. Lee owned, controlled, and operated four businesses for the purpose of manufacturing and distributing male sexual enhancement pills that he marketed as herbal remedies but that contained undisclosed tadalafil, a prescription drug product. Until February 22, 2017, Mr. Lee conspired with others to import bulk tadalafil, with labeling that was false and misleading, from suppliers in China contrary to law. Mr. Lee had his Chinese suppliers ship the bulk tadalafil under false labeling to commercial mailboxes that he controlled in New Jersey and Pennsylvania. Mr. Lee then had the commercial mailbox companies that received the Chinese shipment repackage the tadalafil shipments and forward them to mailboxes Mr. Lee controlled in California. After receiving the bulk tadalafil in California, Mr. Lee caused it to be manufactured into at least 5 and a half million pills that he sold to distributors across the United States. The pills Mr. Lee manufactured contained levels of tadalafil significantly higher than the levels in FDA-approved prescription drugs such as Cialis. Mr. Lee sold at least $11 million worth of these pills to distributors in packages with labeling that did not disclose the presence of tadalafil. When, as on a number of occasions, FDA announced that a brand of pills sold by one of Mr. Lee companies contained undeclared tadalafil, he would establish a new company and/or begin manufacturing identical pills with different brand names in an effort to evade FDA regulators.

As contained in count 2 of the information in Mr. Lee's case, to which Mr. Lee pleaded guilty, on or about February 9, 2017, Mr. Lee fraudulently and knowingly, and contrary to law, imported two parcels of the bulk drug tadalafil with labeling that was false and misleading as to the parcels' contents, labels that did not contain accurate statements of the quantity of the contents in terms of weight, measure, and numerical count, and labeling that did not bear adequate directions for use, contrary to sections 301(a) and 502(a)(1), (b), and (f) of the FD&C Act (21 U.S.C. 331(a), 352(a)(1), (b), and (f)).

As a result of these convictions, FDA sent Mr. Lee, by certified mail on February 10, 2020, a notice proposing to debar him for a 10-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Lee's felony conviction for one felony count under Federal law for conspiracy to import merchandise contrary to law and to defraud the United States was for conduct relating to the importation into the United States of any drug or controlled substance because he conspired to illegally import bulk tadalafil and repackage it into pills that he resold across the United States. The proposal was also based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Lee's felony conviction for one felony count under Federal law for importing merchandise contrary to law was for conduct relating to the importation into the United States of any drug or controlled substance because he also fraudulently and knowingly imported two parcels of bulk drug tadalafil into the United States contrary to sections 301(a) and 502(a)(1), (b), and (f) of the FD&C Act.

In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Lee's offenses, and concluded that these felony offenses warrant the imposition of a 10-year period of debarment.

The proposal informed Mr. Lee of the proposed debarment and offered Mr. Lee an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Lee received the proposal and notice of opportunity for a hearing on February 14, 2020. Mr. Lee failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. John Seil Lee has been convicted of two felony counts under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that each offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act. Under section 306(c)(2)(A) of the FD&C Act, in the case of a person debarred for multiple offenses, FDA may determine whether the periods of debarment shall run concurrently or consecutively. FDA has concluded that the 5-year period of debarment for each of the two offenses for which Mr. Lee was convicted will run consecutively, resulting in a total debarment period of 10 years.

As a result of the foregoing finding, Mr. Lee is debarred for a period of 10 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act, the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Lee is a prohibited act.

Any application by Mr. Lee for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2019–N–5969 and sent to the Dockets Management Staff (see **ADDRESSSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *http://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16062 Filed 7–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3277]

Revocation of Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection and/or Diagnosis of Zika Virus

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Chembio Diagnostic Systems, Inc. (''Chembio'') for the DPP Zika IgM Assay System. FDA revoked this Authorization on June 3, 2020, under

the Federal Food, Drug, and Cosmetic Act (FD&C Act), in consideration of the premarket notification clearance by FDA for the DPP Zika IgM System, DPP Zika IgM System Control Pack, and DPP Micro Reader that was determined to be substantially equivalent to a legally marketed class II predicate device on June 3, 2020. The revocation, which includes an explanation of the reasons for revocation, is reprinted in this document.

DATES: The Authorization is revoked as of June 3, 2020.

ADDRESSES: Submit written requests for single copies of the revocation to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155.

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On September 27, 2017, FDA issued an EUA to Chembio, for the DPP Zika IgM Assay System, subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on November 17, 2017 (82 FR 54361), as required by section 564(h)(1) of the FD&C Act. In response to requests from Chembio, the EUA was amended on February 6, 2018, and August 3, 2018. Subsequently, on June 3, 2020, Chembio submitted a premarket notification to FDA for the DPP Zika IgM System, DPP Zika IgM System Control Pack, and DPP Micro Reader (K200506), that was determined to be substantially equivalent to a legally marketed Class II predicate device.

II. EUA Criteria for Issuance No Longer Met

Under section 564(g)(2) of the FD&C Act, the Secretary of Health and Human Services may revoke an EUA if, among other things, the criteria for issuance are no longer met. On June 3, 2020, FDA revoked the EUA for Chembio's DPP Zika IgM Assay System because the criteria for issuance were no longer met. Under section 564(c)(3) of the FD&C Act, an EUA may be issued only if FDA concludes there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating the disease or condition. FDA has determined that the criteria for issuance of such authorization under section 564(c)(3) of the FD&C Act are no longer met because Chembio's DPP Zika IgM System, DPP Zika IgM System Control Pack, and DPP Micro Reader was determined on June 3, 2020, to be substantially equivalent to a legally marketed class II predicate device with the generic name ''Zika virus serological reagents.'' As such, FDA concluded that there is an adequate, approved, and available alternative for diagnosing Zika virus infection for purposes of section 564(c)(3) of the FD&C Act and accordingly revoked the Authorization pursuant to section 564(g)(2)(B) of the FD&C Act.

III. Electronic Access

An electronic version of this document and the full text of the revocation are available on the internet at *https://www.regulations.gov/.*

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g) of the FD&C Act are met, FDA has revoked the EUA for Chembio's DPP Zika IgM Assay System. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

June 3, 2020

Louise Muscat Sigismondi
R&D Director of Regulatory Affairs
Chembio Diagnostic Systems
3661 Horseblock Road
Medford, NY 11763

Dear Ms. Sigismondi:

This letter is to notify you of the revocation of the Emergency Use Authorization (EUA170006) for emergency use of Chembio Diagnostic Systems, Inc.'s ("Chembio") DPP Zika IgM Assay System, issued on September 27, 2017, and amended on February 6, 2018, and August 3, 2018.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revised or revoked when the criteria under section 564(b)(1) of the Act no longer exist, the criteria under section 564(c) of the Act for issuance of such authorization are no longer met, or other circumstances make such revision or revocation appropriate to protect the public health or safety.

FDA has determined that the criteria for issuance of such authorization under section 564(c) of the Act are no longer met. Under section 564(c)(3) of the Act, an EUA may be issued only if FDA concludes there is no adequate, approved[1], and available alternative to the product for diagnosing, preventing, or treating the disease or condition. Chembio submitted a premarket notification to FDA for the DPP Zika IgM System, DPP Zika IgM System Control Pack, and DPP Micro Reader (K200506) that was determined to be substantially equivalent to a legally marketed Class II predicate device, classified under 21 CFR 866.3935, with the generic name "Zika virus serological reagents," on June 3, 2020. FDA has concluded "that this is an adequate, approved[1], and available alternative for diagnosing Zika virus infection for purposes of section 564(c)(3) of the Act."

Accordingly, FDA revokes EUA170006 for emergency use of DPP Zika IgM Assay System, pursuant to section 564(g)(2) of the Act. As of the date of this letter, the DPP Zika IgM Assay System that was authorized by FDA for emergency use under EUA170006 is no longer authorized by FDA.

[1] In the context of section 564, the term "approved" refers to a product that is approved, licensed, or cleared under section 505, 510(k), or 515 of the Act or section 351 of the Public Health Service Act. See section 564(a)(2) of the Act.

Page 2 – Ms. Sigismondi, Chembio Diagnostic Systems.

Chembio should instruct customers who have remaining DPP Zika IgM Assay System EUA product inventory to work with Chembio to replace the EUA product with the device cleared under K200506. FDA encourages Chembio to use all appropriate means (e.g., mail, email, or website link) to notify affected customers of the EUA revocation and provide access to the device cleared on June 3, 2020, under premarket notification submission K200506.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Dated: July 17, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16014 Filed 7–23–20; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Prasadarao Nemani, Ph.D. (also known as Nemani V. Prasadarao) (Respondent), Research Professor of Pediatrics, Division of Infectious Disease, Children's Hospital Los Angeles (CHLA). Dr. Nemani engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), grants R01 AI040567 and R01 AI049473. The administrative actions, including supervision for a period of four (4) years, were implemented beginning on July 7, 2020, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Elisabeth A. Handley, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case: *Prasadarao Nemani, Ph.D., Children's Hospital Los Angeles:* Based on the report of an investigation conducted by CHLA and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Prasadarao Nemani, Research Professor of Pediatrics, Division of Infectious Disease, CHLA, engaged in research misconduct in research supported by PHS funds, specifically NIAID, NIH, grants R01 AI040567 and R01 AI049473.

ORI found that Respondent engaged in research misconduct by recklessly including falsified and/or fabricated data in the following published paper and grant applications submitted for PHS funds:

- *Infect Immun.* 2009;77:1031–43 (hereafter referred to as ''*Infect Immun* 2009''). Retraction in: *Infect Immun.* 2018 May 22;86(6):e00212–18
- R01 AI107015–01 submitted to NIAID, NIH
- R01 AI125595–01A1 submitted to NIAID, NIH
- R01 AI125595–01 submitted to NIAID, NIH
- R01 NS073115–06A1 submitted to the National Institute of Neurological Disorders and Stroke (NINDS), NIH

Respondent recklessly reported falsified and/or fabricated image data for enterobacterial infection-induced intestinal epithelial cell injury in a neonatal murine model to falsely represent results using images from unrelated experiments in eight (8) figures included in one (1) published paper and four (4) grant applications. Specifically, Respondent falsely reported the following figures:

- Figure 1C in *Infect Immun* 2009
- Figures 7, 8A, 8B, and 8C in R01 AI107015–01
- Figure 6C in R01 AI125595–01A1
- Figure 6C R01 AI125595–01
- Figure 5B in R01 NS073115–06A1

Dr. Nemani entered into a Voluntary Settlement Agreement and agreed to the following:

(1) Respondent agreed to have his research supervised for a period of four (4) years beginning on July 7, 2020. Respondent agreed that prior to the

submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval. The supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution. Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI. Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for a period of four (4) years from the effective date of the Agreement. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals, setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of any PHS grant applications (including supplements, resubmissions, etc.), manuscripts reporting PHS-funded research submitted for publication, and abstracts. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application/publication is supported by the research record.

(3) Respondent agreed that for a period of four (4) years beginning on July 7, 2020, any institution employing him shall submit, in conjunction with each application of PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract.

(4) If no supervisory plan is provided to ORI, Respondent agreed to provide certification to ORI at the conclusion of the supervision period that he has not engaged in, applied for, or had his name included on any application, proposal, or other request for PHS funds without prior notification to ORI.

(5) Respondent agreed to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of four (4) years, beginning on July 7, 2020.

Dated: July 20, 2020.

Elisabeth A. Handley,

Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2020–16034 Filed 7–23–20; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Member Conflict: Molecular & Cellular Neurobiology, August 4, 2020, 1:00 p.m. to 05:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on July 10, 2020, 85 FR 41607.

This notice is being amended to change the meeting date from August 4, 2020 to August 10, 2020 and meeting time from 1:00 p.m. to 5:00 p.m. to 11:00 a.m. to 5:00 p.m. The meeting is closed to the public.

Dated: July 20, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16023 Filed 7–23–20; 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 Member Conflict: Cardiovascular Sciences.

Date: August 20, 2020.

Time: 8:00 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: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, (301) 435–5575, *hamannkj@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 20, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16020 Filed 7–23–20; 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; NTU COVID–19.

Date: August 10, 2020.

Time: 8:00 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: Barbara J. Nelson, 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, 301–435–0806, *nelsonbj@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. 93.859, 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 20, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16018 Filed 7–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0099]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0019

AGENCY: Coast Guard, Homeland Security (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: 1625–0019, Alternative Compliance for International and Inland Navigation Rules; 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 22, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0099] 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–2020–0099], and must be received by September 22, 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: Alternative Compliance for International and Inland Navigation Rules—33 CFR parts 81 through 89.

OMB Control Number: 1625–0019.

Summary: The information collected provides an opportunity for an owner, operator, builder, or agent of a unique vessel to present their reasons why the vessel cannot comply with existing International/Inland Navigation Rules and how alternative compliance can.

Need: Certain vessels cannot comply with the International Navigation Rules (see 33 U.S.C. 1601 through 1608; 28 U.S.T. 3459, and T.I.A.S. 8587) and Inland Navigation Rules (33 U.S.C. 2071). The Coast Guard thus provides an opportunity for alternative compliance. However, it is not possible to determine whether alternative compliance is appropriate, or what kind of alternative procedures might be necessary, without this collection.

Forms: Not applicable.

Respondents: Vessel owners, operators, builders and agents.

Frequency: One-time application.

Hour Burden Estimate: The estimated burden has decreased from 207 hours to 180 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 21, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–16118 Filed 7–23–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0100]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0064

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: 1625–0064, Plan Approval and Records for Subdivision and Stability Regulations; 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 22, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0100] 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–2020–0100], and must be received by September 22, 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: Plan Approval and Records for Subdivision and Stability Regulations—Title 46 CFR subchapter S.

OMB Control Number: 1625–0064.

Summary: The regulations require owners, operators, or masters of certain inspected vessels to obtain and/or post various documents as part of the Coast Guard commercial vessel safety program.

Need: Title 46 U.S.C. 3306 authorizes the Coast Guard to prescribe rules for the safety of certain vessels. Title 46 CFR Subchapter S contains the rules regarding subdivision and stability.

Forms: None.

Respondents: Owners, operators, or masters of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 7,870 hours to 7,193 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 21, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–16128 Filed 7–23–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0098]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0002

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: 1625–0002, Applications for Vessel Inspection, Waiver and Continuous Synopsis Record; 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 22, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0098] 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–2020–0098], and must be received by September 22, 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: Applications for Vessel Inspection, Waiver and Continuous Synopsis Record.

OMB Control Number: 1625–0002.

Summary: The collection of information requires the owner, operator, agent, or master of a vessel to apply in writing to the Coast Guard before the commencement of an inspection for certification, when a waiver is desired from the requirements of navigation and vessel inspection, or to request a Continuous Synopsis Record.

Need: Title 46 U.S. Code 3306 authorizes the Coast Guard to establish regulations to protect life, property, and the environment. The reporting requirements are part of the Coast Guard's Marine Safety Program.

Forms:

- CG–2633, Application for Waiver and Waiver Order.
- CG–3752, Application for Inspection of U.S. Vessel.
- CG–6039, Application for Continuous Synopsis Record.

Respondents: Vessel owner, operator, agent, master or interested U.S. Government agency.

Frequency: On occasion, annually, or on a 5-year cycle.

Hour Burden Estimate: The estimated burden has increased from 741 hours to 745 hours per year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 21, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–16117 Filed 7–23–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0003]

Agency Information Collection Activities: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 22, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0003 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit.

OMB Number: 1651–0003.

Form number: 7512, 7512A.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected.

Type of Review: Extension without change.

Affected Public: Businesses.

Abstract: 19 U.S.C. 1552–1554 authorizes the movement of imported merchandise from the port of importation to another Customs and Border Protection (CBP) port prior to release of the merchandise from CBP custody. Forms 7512, ''Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit'' and 7512A, ''Continuation Sheet,'' allow CBP to exercise control over merchandise moving in-bond (merchandise that has not entered the commerce of the United States). Forms 7512 and 7512A are filed by importers, brokers or carriers, and they collect information such as the names of the importer and consignee, a description of the imported merchandise, and the ports of lading and unlading. Use of these forms is provided for by various provisions in 19 CFR to include 19 CFR 10.60, 19 CFR 10.61, 19 CFR 123.41, 19 CFR 123.42, 19 CFR 122.92, and 19 CFR part 18. These forms are accessible at: *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

Estimated Number of Respondents: 6,200.

Estimated Number of Annual Responses per Respondent: 871.

Estimated Number of Total Annual Responses: 5,400,000.

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 896,400.

Dated: July 20, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–16015 Filed 7–23–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4489–DR; Docket ID FEMA–2020–0001]

Illinois; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–4489–DR), dated March 26, 2020, and related determinations.

DATES: This change occurred on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin M. Sligh, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James K. Joseph as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16105 Filed 7–23–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4515–DR; Docket ID FEMA–2020–0001]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–4515–DR), dated April 3, 2020, and related determinations.

DATES: This change occurred on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin M. Sligh, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James K. Joseph as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16109 Filed 7–23–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2043]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository

address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Jefferson	City of Arvada (19–08–0970P).	The Honorable Marc Williams, Mayor, City of Arvada, 8101 Ralston Road, Arvada, CO 80002.	Engineering Department, 8101 Ralston Road, Arvada, CO 80002.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2020	085072
Jefferson	Unincorporated areas of Jefferson County (19–08–0970P).	The Honorable Lesley Dahlkemper, Chair, Jefferson County, Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2020	080087
Florida:						
Clay	Unincorporated areas of Clay County (20–04–0028P).	The Honorable Gayward Hendry, Chairman, Clay County, Board of Commissioners, P.O. Box 1366, Green Cove Springs, FL 32043.	Clay County Development Services Department, 477 Houston Street, Green Cove Springs, FL 32043.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	120064
Collier	Unincorporated areas of Collier County (20–04–1400P).	Mr. Burt L. Saunders, Chairman, Collier County Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Growth Management Department, 2800 North Horseshoe Drive, Naples, FL 34104.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	120067
Lee	City of Sanibel (19–04–6092P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Community Services Department, 800 Dunlop Road, Sanibel, FL 33957.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	120402
Monroe	Unincorporated areas of Monroe County (20–04–2043P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	125129
Osceola	Unincorporated areas of Osceola County (19–04–6034P).	The Honorable Viviana Janer, Chair, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	120189
Sarasota	Town of Longboat Key (20–04–1892P).	Mr. Tom Harmer, Manager, Town of Longboat Key, 501 Bay Isles Road, Longboat Key, FL 34228.	Planning, Zoning and Building Department 600 General Harris Street, Longboat Key, FL 34228.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2020	125126
Sarasota	Unincorporated areas of Sarasota County (20–04–1846P).	The Honorable Charles D. Hines, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 30, 2020	125144
Massachusetts: Essex.	Town of Rockport (20–01–0536P).	The Honorable Paul F. Murphy, Chairman, Town of Rockport Board of Selectmen, 34 Broadway, Rockport, MA 01966.	Department of Inspection Services, 34 Broadway, Rockport, MA 01966.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2020	250100
Maine:						
Washington	Town of Alexander (20–01–0495P).	The Honorable Foster Carlow Jr., Chairman, Town of Alexander Board of Selectmen, 50 Cooper Road, Alexander, ME 04694.	Town Hall, 50 Cooper Road, Alexander, ME 04694.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 19, 2020	230303
Washington	Town of Baileyville (20–01–0495P).	Mr. Chris Loughlin, Town of Baileyville Manager, P.O. Box 370, Baileyville, ME 04694.	Town Hall, 63 Broadway, Baileyville, ME 04694.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 19, 2020	230304

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Washington	Town of Baileyville (20–01–0623P).	Mr. Chris Loughlin, Town of Baileyville Manager, P.O. Box 370, Baileyville, ME 04694.	Town Hall, 63 Broadway, Baileyville, ME 04694.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2020 ..	230304
Washington	Town of Princeton (20–01–0495P).	The Honorable Scott Carle, Chairman, Town of Princeton Board of Selectmen, P.O. Box 408, Princeton, ME 04668.	Town Hall, 15 Depot Street, Princeton, ME 04668.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 19, 2020 ..	230320
Washington	Town of Princeton (20–01–0623P).	The Honorable Scott Carle, Chairman, Town of Princeton Board of Selectmen, P.O. Box 408, Princeton, ME 04668.	Town Hall, 15 Depot Street, Princeton, ME 04668.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2020 ..	230320
Washington	Town of Vanceboro (20–01–0424P).	The Honorable Harold J. Jordan, Chairman, Town of Vanceboro Board of Selectmen, P.O. Box 24, Vanceboro, ME 04491.	Town Hall, 101 High Street, Vanceboro, ME 04491.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 16, 2020 ..	230325
Washington	Township of Lambert Lake (20–01–0424P).	Ms. Stacie Beyer, Chief Planner, Land Use Planning Commission, Township of Lambert Lake, 18 Elkins Lane, Augusta, ME 04333.	Township Hall, 18 Elkins Lane, Augusta, ME 04333.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 16, 2020 ..	230472
Pennsylvania: Washington.	Township of Union (20–03–1148P).	The Honorable Heather Daerr, Chair, Township of Union Board of Supervisors, 3904 Finleyville-Elrama Road, Finleyville, PA 15332.	Township Hall, 3904 Finleyville- Elrama Road, Finleyville, PA 15332.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 8, 2020	420860
Texas:						
Collin	City of Celina (19–06–2644P).	The Honorable Sean Terry, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009.	City Hall, 142 North Ohio Street, Celina, TX 75009.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020 ..	480133
Collin	Unincorporated areas of Collin County (19–06–2644P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020 ..	480130
Denton	City of Denton (20–06–2308P).	The Honorable Chris Watts, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	Engineering Department, 901–A Texas Street, Denton, TX 76209.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 8, 2020	480194
Denton	Town of Argyle (19–06–2972P).	The Honorable Donald Moser, Mayor, Town of Argyle, P.O. Box 609, Argyle, TX 76226.	Town Hall, 308 Denton Street, Argyle, TX 76226.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2020	480775
Denton	Unincorporated areas of Denton County (20–06–2308P).	The Honorable Andy Eads, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Public Works-Engineering Department, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 8, 2020	480774
Harris	Unincorporated areas of Harris County (19–06–1346P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Department, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	480287
Midland	City of Midland (19–06–2755P).	The Honorable Patrick Payton, Mayor, City of Midland, 300 North Loraine Street, Midland, TX 79701.	City Hall, 300 North Loraine Street, Midland, TX 79701.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2020 ..	480477
Midland	City of Midland (19–06–3901P).	The Honorable Patrick Payton, Mayor, City of Midland, 300 North Loraine Street, Midland, TX 79701.	City Hall, 300 North Loraine Street, Midland, TX 79701.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 26, 2020 ..	480477
Tarrant	City of Haslet (19–06–2524P).	The Honorable Bob Golden, Mayor, City of Haslet, 101 Main Street, Haslet, TX 76052.	Engineering and Public Works Department, 101 Main Street, Haslet, TX 76052.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2020 ..	480600
Virginia:						
Frederick	City of Winchester (20–03–0437P).	The Honorable John David Smith, Jr., Mayor, City of Winchester, 15 North Cameron Street, Winchester, VA 22601.	City Hall, 15 North Cameron Street, Winchester, VA 22601.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 19, 2020 ..	510173

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Frederick	Unincorporated areas of Frederick County (20–03–0437P).	The Honorable Charles S. DeHaven, Jr., Chairman-at-Large, Frederick County, Board of Supervisors, 107 North Kent Street, Winchester, VA 22601.	Frederick County Zoning Department, 107 North Kent Street, Winchester, VA 22601.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 19, 2020 ..	510063
Washington DC	District of Columbia (20–03–0337P).	The Honorable Muriel Bowser, Mayor, District of Columbia, 1350 Pennsylvania Avenue Northwest, Washington, DC 20004.	Department of Energy and Environment, 1200 1st Street Northeast, Suite 500, Washington, DC 20002.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 19, 2020 ..	110001

[FR Doc. 2020–16091 Filed 7–23–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4531–DR; Docket ID FEMA–2020–0001]

Minnesota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–4531–DR), dated April 7, 2020, and related determinations.

DATES: This change occurred on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin M. Sligh, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James K. Joseph as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16111 Filed 7–23–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4520–DR; Docket ID FEMA–2020–0001]

Wisconsin; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–4520–DR), dated April 4, 2020, and related determinations.

DATES: This change occurred on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin M. Sligh, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James K. Joseph as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16110 Filed 7–23–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4494–DR; Docket ID FEMA–2020–0001]

Michigan; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Michigan (FEMA–4494–DR), dated March 27, 2020, and related determinations.

DATES: This change occurred on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

(FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin M. Sligh, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James K. Joseph as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16106 Filed 7–23–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4507–DR; Docket ID FEMA–2020–0001]

Ohio; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–4507–DR), dated March 31, 2020, and related determinations.

DATES: This change occurred on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin M. Sligh, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James K. Joseph as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16107 Filed 7–23–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4508–DR; Docket ID FEMA–2020–0001]

Montana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Montana (FEMA–4508–DR), dated March 31, 2020, and related determinations.

DATES: This amendment was issued July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Montana is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 31, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Montana (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16108 Filed 7–23–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–29]

30-Day Notice of Proposed Information Collection: OMB Control No.: 2502–0305; OMB Title: Management Certification & Entity Profile

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* August 24, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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/Start* Printed Page 15501PRAMain. 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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email

Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 12, 2020.

A. Overview of Information Collection

Title of Information Collection: Management Certification & Entity Profile.

OMB Approval Number: 2502–0305.

Type of Request: Extension of currently approved collection.

Form Number: HUD–9832 Management Entity Profile; HUD–9839–a Project Owner's Certification for Owner-Managed Multifamily Housing Projects; HUD–9839–b Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity-of-Interest or Independent Management Agents; HUD–9839–c Project Owner's/Borrower's Certification for Elderly Housing Projects Managed by Administrators.

Description of the need for the information and proposed use: Owners of HUD-held, -insured, or subsidized multifamily housing projects must provide information for HUD's oversight of management agents/entities.

Respondents (*i.e.* affected public): Property owners; project managers.

Estimated Number of Respondents: 61,240.

Estimated Number of Responses: 3,062.

Frequency of Response: 0.05.

Average Hours per Response: 1.15617.

Total Estimated Burden: 3,540.19.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–16064 Filed 7–23–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000.10200000.DF0000. LXSSH1080000.20X.HAG 19–0096]

Notice of Public Meeting for the San Juan Islands National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior Bureau of Land Management's (BLM) San Juan Islands National Monument Advisory Committee (MAC) will meet as indicated below.

DATES: The MAC will hold a public meeting on Thursday, August 27, 2020, from 10:00 a.m. to 3:30 p.m. A public comment period will be available in the afternoon. If public health restrictions remain in place, the meeting will be held virtually.

ADDRESSES: The meeting will be held at the Lopez Community Center for the Arts, 204 Village Rd., Lopez Island, WA 98261.

FOR FURTHER INFORMATION CONTACT: Jeff Clark, Spokane District Public Affairs Officer, 1103 N Fancher, Spokane Valley, WA 99212, (509) 536–1297, or *jeffclark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1(800) 877–8339 to contact the above individual during normal business hours. This service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The San Juan Islands MAC is comprised of 12 members representing a wide array of interests, including recreation, tribal interests, education, environmental organizations, and landowners. The August meeting will begin at 10:00 a.m. with a welcome of the new MAC members. After introductions, the members will review the Proposed Resource Management Plan and Environmental Impact Statement. This discussion/review will continue until a working lunch at noon, at which time members of the public will have the opportunity to make comments to the MAC during a one-hour public comment period. The review will continue after the public comment period if necessary. Following the review, members will consider opportunities for the MAC to support implementation of the management plan once the record of decision is signed. This will be followed by a roundtable discussion on local landscape status over the past two years. The MAC will also allow public comments before the meeting adjourns which will occur no later than 3:30 p.m. All advisory council meetings are open to the public. Persons wishing to make comments during the public comment period should register in person with the BLM by 11:00 a.m. on the meeting date at the meeting location. Depending on the number of persons wishing to comment, the length of comments may be limited. The public may send written comments to the MAC at: BLM Spokane District, Attn. MAC, 1103 N Fancher, Spokane Valley, WA 99212. All written comments should be received no later than August 26, 2020. Comments will be shared with the MAC members. The BLM appreciates all comments.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Kurt Pindel,

Spokane District Manager.

[FR Doc. 2020–16056 Filed 7–23–20; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1194]

Certain High-Density Fiber Optic Equipment and Components Thereof; Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 9) of the presiding administrative law judge (''ALJ''), granting complainant's unopposed motion to amend the complaint and notice of investigation (''NOI'') to add proposed respondent AFL Telecommunications LLC (''AFL Telecommunications'') and to terminate respondent AFL Telecommunications Holdings LLC (''AFL Holdings'').

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC (''Corning'') of Charlotte, North Carolina. 85 FR 16653 (Mar. 24, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-density fiber optic equipment and components thereof by reason of infringement of certain claims of U.S. Patent Nos.: 9,020,320; 8,712,206; 10,120,153; 10,094,996; and 10,444,456. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named thirteen respondents including AFL Holdings of Duncan, South Carolina. *Id.* The notice of investigation also names the Office of Unfair Import Investigations as a party. *Id.* at 16654.

On June 1, 2020, Corning filed a motion to amend the complaint and notice of investigation to add proposed respondent AFL Telecommunications and to terminate respondent AFL Holdings. The motion notes that AFL Telecommunications is a related corporate entity of AFL Holdings, and that termination of AFL Holdings is appropriate because AFL Telecommunications is the operating entity engaged in importation and sales potentially relevant to this investigation. Order No. 9 at 1–2 (June 19, 2020). No response was filed.

On June 19, 2020, the ALJ issued the subject ID granting the unopposed motion to amend. *Id.* at 3. The ID notes that the motion complies with Commission Rules 210.14 and 210.21, 19 CFR 210.14 and 210.21. *See id.* at 1–3. The ID concludes that ''good cause exists to amend the amended complaint and notice of investigation to conform to the correct information.'' *Id.* at 3. No petitions for review were filed.

The Commission has determined not to review the subject ID. The complaint and notice of investigation have been amended to add respondent AFL Telecommunications and to terminate respondent AFL Holdings.

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission vote for this determination took place on July 20, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: July 20, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16029 Filed 7–23–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1132 (Modification)]

Certain Motorized Vehicles and Components Thereof; Commission Determination To Institute a Modification Proceeding; Schedule and Procedure for the Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding in the above-captioned investigation. The Commission has also determined to delegate the modification proceeding to the Chief Administrative Law Judge (''ALJ'') to designate a presiding ALJ to make all necessary factual and legal findings and to issue a recommended determination. The Commission has further determined to set the date for the ALJ to issue a recommended determination to three months from issuance of this notice.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by

contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 13, 2018, based on a complaint, as amended, filed by FCA US LLC of Auburn Hills, Michigan (''Complainant''). *See* 83 FR 46517 (Sept. 13, 2018). The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain motorized vehicles and components thereof by reason of: (1) Infringement of U.S. Trademark Registration Nos. 4,272,873; 2,862,487; 2,161,779; 2,794,553; and 4,043,984 (collectively, ''the Asserted Trademarks''); (2) trademark dilution and unfair competition in violating the complainant's common law trademark rights; and (3) trade dress infringement. *See id.* The notice of investigation names Mahindra & Mahindra Ltd. of Mumbai, India and Mahindra Automotive North America, Inc. of Auburn Hills, Michigan (collectively, ''Respondents'') as respondents in this investigation. *See id.* The Office of Unfair Import Investigations is also a party to this investigation. *See id.*

The ALJ conducted an evidentiary hearing on August 19–23, 2019. On November 8, 2019, the ALJ issued a final initial determination (''FID'') finding a violation of section 337. Specifically, the FID determined that Respondents' Roxor vehicle (2018–2019 model) infringes FCA's asserted trade dress but not its Asserted Trademarks. The FID also determined that Complainant did not establish trademark dilution.

On June 11, 2020, the Commission determined to affirm the FID's determination of a violation of section 337. The Commission issued an LEO barring entry of articles that infringe the asserted trade dress and a CDO against both Respondents. The Commission declined to adjudicate Respondents' proposed redesigned vehicles and required Respondents to obtain a ruling (via an advisory opinion or a modification proceeding) from the Commission prior to any importation of redesigned vehicles or components thereof.

On June 18, 2020, Respondents filed a petition for an expedited modification proceeding as to two redesigned vehicles, namely the 2020 Roxor vehicle and the Post-2020 Roxor vehicle. Respondents further request, should the Commission determine that the 2020 Roxor vehicle requires more time, that the Commission institute a modification proceeding only as to the Post-2020 ROXOR vehicle. On June 29, 2020, Complainant filed a response in opposition to Respondents' petition. OUII did not file a response to the petition. On July 7, 2020, Respondents filed a motion for leave to file a reply in support of their petition for an expedited modification proceeding, which is hereby GRANTED.

The Commission has determined to institute a modification proceeding under 19 U.S.C. 1337(k) and 19 CFR 210.76 to adjudicate infringement with respect to Respondents' Post-2020 ROXOR vehicle. The Commission has also determined to delegate the modification proceeding to the Chief ALJ to designate a presiding ALJ to make all necessary factual and legal findings and to issue a recommended determination as to whether the Commission shall modify the remedial orders to explicitly exempt Respondents' Post-2020 ROXOR vehicle. The Commission has further determined to set the deadline for the ALJ to issue a recommended determination to three months from issuance of this notice. Should the ALJ determine that more time is necessary, the deadline may be extended for good cause shown.

The Commission's vote on this determination took place on July 20, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 20, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16028 Filed 7–23–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–686]

Bulk Manufacturer of Controlled Substances Application: Ampac Fine Chemicals LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 22, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 12, 2020, Ampac Fine Chemicals LLC, Highway 50 and Hazel Avenue, Rancho Cordova, California 95670, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Levomethorphan	9210	II
Levorphanol	9220	II
Thebaine	9333	II
Remifentanil	9739	II
Tapentadol	9780	II

The company plans to manufacture the listed controlled substances for distribution to its customers.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–16104 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–686]

Bulk Manufacturer of Controlled Substances Application: Ampac Fine Chemicals LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 22, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 12, 2020, Ampac Fine Chemicals LLC, Highway 50 and Hazel Avenue, Rancho Cordova, California 95670, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Levomethorphan	9210	II
Levorphanol	9220	II
Thebaine	9333	II
Remifentanil	9739	II
Tapentadol	9780	II

The company plans to manufacture the listed controlled substances for distribution to its customers.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–16104 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–685]

Importer of Controlled Substances Application: Arizona Department of Corrections

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 24, 2020. Such persons may also file a written request for a hearing on the application on or before August 24, 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 16, 2020, Arizona Department of Corrections, 1305 E Butte Avenue, ASPC-Florence, Florence, Arizona 85132–9221, applied to be registered as an importer of the following basic class(es) of a controlled substance:

Controlled substance	Drug code	Schedule
Pentobarbital	2270	II

The facility intends to import the above-listed controlled substance for legitimate use. This particular controlled substance is not available for the intended legitimate use within the current domestic supply of the United States.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–16103 Filed 7–23–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0055]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; The National Instant Criminal Background Check System

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-day Notice.

SUMMARY: Department of Justice (DOJ), Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 24, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: The National Instant Criminal Background Check System (NICS) Checks by Criminal Justice Agencies (CJA)

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: 1110–0055

(4) Sponsoring component: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

(5) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Federal, state, county, city, and tribal law enforcement agencies.

Abstract: In November 1993, the Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103–159, was signed into law and required federal firearms licensees (FFL) to request background checks on individuals attempting to purchase or receive a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the United States Attorney General to establish a NICS that FFLs may contact by telephone, or other electronic means in addition to telephone. for information to be supplied immediately on whether the receipt of a firearm by a prospective transferee would violate Section 922 (g) or (n) of Title 18, United States Code, or state law. There are additional authorized uses of the NICS found at Title 28, Code of Federal Regulation (CFR), Section 25.6(j). The FBI authorized the CJAs to initiate a NICS check to assist their transfer of firearms to private individuals as a change to 28.CFR§ 25.6(j) in the **Federal Register**, Volume 78, Number 18 pages 5757–5760.

(6) An estimate of the total number of respondents and the amount of time

estimated for an average respondent to respond/reply: It is estimated the time burden associated with this collection is 3 minutes per transaction, depending on the individual circumstance. The total annual respondent entities taking advantage of this disposition process is 21,156 CJAs.

(7) An estimate of the total public burden (in hours) associated with the collection: It is estimated the burden associated with this collection is 3 minutes per transaction depending on the individual circumstance. If each of the 21,156 respondents conducted three dispositions with this authority per year at 3 minutes per check, then it is anticipated the business burden would be 3,173.4 hours per year.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: July 21, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–16126 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0003]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; ARCOS Transaction Reporting; DEA Form 333

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-day Notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 22, 2020.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* ARCOS Transaction Reporting.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 333. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public: Business or other for-profit.

Abstract: Section 307 of the Controlled Substances Act (21 U.S.C. 827) requires controlled substance manufacturers and distributors to make periodic reports to DEA regarding the sale, delivery, and other disposal of certain controlled substances. These reports help ensure a closed system of distribution for controlled substances, and are used to comply with international treaty obligations.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

	Number of annual respondents	Number of annual responses	Average time per response (hours)	Total annual hours
DEA–333 (paper)	31	110	0.50	55
DEA–333 (electronic)	1,150	11,180	0.25	2,795
Total	1,181	11,290		2,850

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* DEA estimates that this collection takes 2,850 annual burden hours.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: July 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–16124 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0046]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Self-Certification, Training, and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products; DEA Form 597

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 22, 2020.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Self-Certification, Training, and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 597. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public: Business or other for-profit.

Abstract: The Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177), requires that on and after September 30, 2006, a regulated seller must not sell at retail over-the-counter (non-prescription) products containing the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, unless it has self-certified to DEA, through DEA's website. The Methamphetamine Production Prevention Act of 2008 (MPPA) (Pub. L. 110–415) was enacted in 2008 to clarify the information entry and signature requirements for electronic logbook systems permitted for the retail sale of scheduled listed chemical products.

Activity	Number of annual respondents	Number of annual responses	Average time per response (minutes)
Training record	51,657	681,872	3
Self-certification		51,657	15
Transaction record (regulated seller)		24,481,773	1
Transaction record (customer)	24,481,773	24,481,773	1
Total	24,533,430	49,697,075	

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* DEA estimates that this collection takes 188,600 cost of burden hours.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: July 20, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–16008 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0007]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension With a Revision of a Previously Approved Collection; Registrant Record of Controlled Substances Destroyed; DEA Form 41

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement

Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 22, 2020.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Registrant Record of Controlled Substances Destroyed.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 41. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: In accordance with the Controlled Substance Act (CSA), every DEA registrant must make a biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. 21 U.S.C. 827 and 958. These records must be maintained separately from all other records of the registrant or, alternatively, in the case of non-narcotic controlled substances, be in such form that required information is readily retrievable from the ordinary business records of the registrant. 21 U.S.C. 827(b)(2). The records must be kept and be available for at least two years for inspection and copying by officers or employees of the United States authorized by the Attorney General. 21 U.S.C. 827(b)(3). The records must be in accordance with and contain such relevant information as may be required by regulations promulgated by DEA. 21 U.S.C. 827(b)(1). These record requirements help to deter and detect diversion of controlled substances and ensure that registrants remain accountable for all controlled substances within their possession and/or control.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

Activity	Number of annual respondents	Number of annual responses	Average time per response (minutes)	Total annual hours
DEA Form 41	90,629	90,629	30	45,315
Total	90,629	90,629		45, 315

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* DEA estimates that this collection takes 45,315 annual burden hours.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: July 20, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–16009 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0034]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Revision of a Currently Approved Collection; Collection of Laboratory Analysis Data on Drug Samples Tested by Non-Federal (State and Local Government) Crime Laboratories

AGENCY: Drug Enforcement Administration, Department of Justice

ACTION: 30-day Notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 24, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information

are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* The National Forensic Laboratory Information System Collection of Analysis Data.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There are no form numbers associated with this collection. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public (Primary): Forensic Science Laboratory Management.

Affected public (Other): None.

Abstract: This collection provides the Drug Enforcement Administration (DEA) with a national database on analyzed drug evidence from non-federal laboratories. Information from this database is combined with the other existing databases to develop more accurate, up-to-date information on abused drugs. This database represents a voluntary, cooperative effort on the part of participating laboratories to provide a centralized source of analyzed drug data.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 2,640 persons annually for this collection at 2.2 hour per respondent, for an annual burden of 5,812 hours.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* DEA estimates that this collection takes 5,812 annual burden hours.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: July 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–16130 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0049]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for National Firearms Examiner Academy—ATF Form 6330.1

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 30-day Notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 24, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for National Firearms Examiner Academy.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number:* ATF Form 6330.1.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: Federal Government.

Abstract: The information requested on the Application for National Firearms Examiner Academy—ATF Form 6330.1 must be provided by all prospective students of the ATF National Firearms Examiner Academy (NFEA). The collected information will be used to determine the applicant's eligibility to acquire firearms and toolmark examiner training at the NFEA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 75 respondents will utilize the form annually, and it will take each respondent approximately 12 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 15 hours, which is equal to 75 (# of respondents) * 1 (# of responses per

respondent) * .20 (12 minutes or the time taken to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–16125 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0021]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection Dispensing Records of Individual Practitioners

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-day Notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 22, 2020.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Dispensing Records of Individual Practitioners.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number is associated with this collection. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public: Business or other for-profit.

Abstract: Pursuant to 21 U.S.C. 827(c), practitioners who regularly dispense or administer controlled substances to patients and charge them for the substances and those practitioners who administer controlled substances in the course of maintenance or detoxification treatment shall keep records of such activities, and accordingly must comply with the regulations on recordkeeping.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

Activity	Number of annual respondents	Number of annual responses	Average annual time per response (hours)
Dispensing records of individual practitioners	62,392	62,392	.5
Recordkeeping requirements of collectors	9,941	9,941	.5
Total	72,333	72,333	N/A

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* DEA estimates that this collection takes 36,167 annual burden hours.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: July 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–16123 Filed 7–23–20; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (20–063)]

Notice of Availability of the Final Supplemental Environmental Impact Statement for Soil Cleanup Activities at Santa Susana Field Laboratory

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Availability (NOA) of the Final Supplemental Environmental Impact Statement (SEIS) for Soil

Cleanup Activities at the Santa Susana Field Laboratory (SSFL).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, and NASA's NEPA-implementing regulations, policy, and procedures, NASA has prepared a Final SEIS for soil cleanup activities at SSFL in Ventura County, California. The purpose of this NOA is to announce the issuance and public availability of the Final SEIS and inform the public of where the document may be viewed. The Final SEIS is intended to inform NASA decision-makers, regulating agencies, and the public about the environmental impact of proposed soil cleanup in the NASA-administered portion of SSFL.

DATES: NASA will execute a Record of Decision (ROD) no sooner than 30 calendar days from the date of publication in the **Federal Register** (FR) of the U.S. Environmental Protection Agency's (EPA's) NOA of the Final SEIS.

ADDRESSES: The Final SEIS may be reviewed at the following locations:

1. Simi Valley Library, 2969 Tapo Canyon Road, Simi Valley, CA 93063, Phone: (805) 526–1735.
2. Platt Library, 23600 Victory Blvd., Woodland Hills, CA 91367, Phone: (818) 340–9386.
3. California State University, Northridge Oviatt Library, 18111 Nordhoff Street, 2nd Floor, Room 265, Northridge, CA 91330, Phone: (818) 677–2285.
4. Department of Toxic Substances Control, 9211 Oakdale Avenue, Chatsworth, CA 91311, Phone: (818) 717–6521.

The Final SEIS is also available on the internet at: *https://www.nasa.gov/feature/environmental-impact-statement-eis-for-demolition-and-environmental-cleanup-activities.*

FOR FURTHER INFORMATION CONTACT: Peter Zorba, SSFL Project Director, by email at *msfc-ssfl-information@mail.nasa.gov,* or 202–714–0496. Additional information about NASA's SSFL Site, the proposed soil cleanup activities, and the associated planning process and documentation (as available) may be found on the internet at *https://ssfl.msfc.nasa.gov* or on the California Department of Toxic Substances Control (DTSC) website at *https://www.dtsc.ca.gov/SiteCleanup/Santa_Susana_Field_Lab/.*

SUPPLEMENTARY INFORMATION: The SSFL site is 2,850 acres located in Ventura County, California, approximately 7 miles northwest of Canoga Park and approximately 30 miles northwest of downtown Los Angeles. SSFL is composed of four areas known as Areas I, II, III, and IV and two ''undeveloped'' areas. The NASA-administered portion is 41.7 acres within Area I and all 409.5 acres of Area II and was historically used for developing and testing rocket engines. The Boeing Company (Boeing) owns the remaining 2,398.8 acres within Areas I, III, IV, and the two undeveloped areas. The Department of Energy (DOE) is responsible for building demolition and cleanup of soils and groundwater in Area IV and the Northern Buffer Zone.

Rocket engine testing has been discontinued at SSFL and the property has been excessed to the General Services Administration (GSA). GSA has conditionally accepted the Report of Excess pending certain environmental cleanup requirements are met.

NASA entered into an Administrative Order on Consent (AOC) for Remedial Action with DTSC on December 6, 2010, ''to further define and make more specific NASA's obligations with respect to the cleanup of soils at the Site.'' Based on the 2010 Order, NASA is required to complete a federal environmental impact analysis pursuant to NEPA and NASA Procedural Requirement (NPR) 8580.1.

NASA completed a Final Environmental Impact Statement (EIS) per NEPA for demolition of site infrastructure, soil cleanup, and groundwater remediation within Area II and a portion of Area I (former Liquid Oxygen [LOX] Plant) of SSFL on March 14, 2014 (79 FR 14545). NASA subsequently issued a ROD for building demolition on April 25, 2014. A ROD for groundwater cleanup was published in the **Federal Register** on October 17, 2018 (83 FR 52570). On October 25, 2019, an NOA was published in the FR (84 FR 57490) for the Draft SEIS, which initiated a 45-day public comment period. On December 9, 2019, NASA published a notice in the FR that advised the public that the comment period would be extended by 30 days to January 8, 2020 (84 FR 67296).

This Final SEIS has been prepared by NASA for soil cleanup within its administered portion of SSFL.

Alternatives: The CEQ's implementing regulations for NEPA require that where significant new information relevant to environmental concerns and bearing on a proposed action or its impacts exists, an SEIS must be prepared for the original EIS so that the Agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposed action. NASA initiated preparation of this Final SEIS when it determined that pursuant to information found in the DTSC's Draft Programmatic Environmental Impact Review for the SSFL cleanup, the soil quantity which may need to be removed from the SSFL site far exceeded the estimate NASA used in its 2014 Final EIS. NASA determined this constituted significant new information relevant to environmental concerns and bearing on the proposed action.

NEPA requires analysis of a range of reasonable alternatives to the proposed action. The alternatives section is the heart of any NEPA document, including this Final SEIS. In determining the scope of alternatives to be considered, NASA considered those alternatives that are: (1) Practical and feasible using both the AOC framework and a risk-based approach based on criteria provided for in the National Contingency Plan and as set forth in applicable California state law, (2) protective both environmentally and from a human health-based perspective, and (3) feasible from a technical implementability standpoint.

As it prepared the Final SEIS and evaluated the alternatives set forth below, NASA was mindful of its responsibility to implement an environmental cleanup of residual contaminants in Area II and the portion of Area I over which it has continued oversight in a manner that is fully protective of public health and the environment, preserves to the maximum extent possible the Site's natural and cultural resources, and is feasible (*i.e.,* implementable). The Final SEIS takes into account other responsible party cleanup obligations for the areas of SSFL that surround NASA's property to ensure a long-term, cohesive, and uniform remedial action is implemented. The Final SEIS considers the following range of alternatives that meet NASA's objectives to clean up soil at the portion of the SSFL site administered by NASA.

- *Alternative A:* AOC Cleanup using DTSC-proposed Look-up Table (LUT) values (similar to the Proposed Action from the 2014 Final EIS with the impacts of increased soil volumes considered)
- *Alternative B:* Revised LUT Cleanup (this alternative involves proposed revisions to seven of the 139 LUT values to reflect standard California Water Board and California Human Health screening values. All other DTSC-proposed LUT values would remain the same.)
- *Alternative C:* Suburban Residential Cleanup (based on the DTSC-approved Standardized Risk Assessment

Methodology [SRAM] Revision 2 Addendum, EPA risk assessment guidelines for residential land use, and California Environmental Protection Agency [Cal EPA] risk assessment guidance)

- *Alternative D:* Recreational Cleanup (based on DTSC-approved SRAM Revision 2 Addendum, EPA risk assessment guidelines for recreational land use, and Cal EPA risk assessment guidance)

A No Action alternative, which is required per NEPA, was also included in the analysis, though it would not meet the purpose and need of the proposed action.

Public meetings on the Draft EIS were held in the vicinity of SSFL on November 20 and 21, 2019. During the review period, NASA received approximately 1,200 comments, over 800 of which were form letters. After considering all comments received, NASA prepared the Final SEIS. There are no substantive changes to the range of alternatives considered. Alternative C, Suburban Residential Cleanup, is identified as the Agency's Preferred Alternative, and, along with Alternative D, the Agency's Environmentally Preferable Alternative.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2020–16076 Filed 7–23–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Contractor Budget and, Contractor Representation and Certification

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before September 22, 2020 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6060, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email at *PRAComments@NCUA.gov*. Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Mackie Malaka at the address above or telephone 703–548–2704.

SUPPLEMENTARY INFORMATION: *OMB Number:* 3133–0189.

Title: Contractor Budget and Contractor Representation and Certification.

Form: NCUA 3249a and 3249b.

Type of Review: Extension of a currently approved collection.

Abstract: Standardized information from prospective outside counsel is essential to the NCUA in carrying out its responsibility as regulator, conservator, and liquidating agent for federally insured credit unions. The information will enable the NCUA to further standardize the data it uses to select outside counsel, consider additional criteria in making its selections, and improve efficiency and recordkeeping related to its selection process.

Affected Public: Private Sector: Business or other for-profits.

Estimated No. of Respondents: 100.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 100.

Estimated Burden Hours per Response: 2.

Estimated Total Annual Burden Hours: 200.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on July 20, 2020.

Dated: July 20, 2020.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2020–16027 Filed 7–23–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board (NSB), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of meetings for the transaction of NSB business as follows:

TIME AND DATE: Wednesday, July 29, 2020 from 11:00 a.m. to 6:45 p.m., and Thursday, July 30, 2020 from 11:00 a.m. to 4:00 p.m. EDT.

PLACE: These meetings will be held by videoconference. There will be no in-person meetings to attend. The public may observe the public meetings, which will be streamed to the NSF You Tube channel. For meetings on Wednesday, July 29, go to: *https://youtu.be/3CXXjWbwsYE.* For meetings on Thursday, July 30, go to: *https://youtu.be/rjs0ny0zgR4.*

STATUS: Some of these meetings will be open to the public. Others will be closed to the public. See full description below.

MATTERS TO BE CONSIDERED:

Wednesday, July 29, 2020

Plenary Board Meeting

Open session: 11:00 a.m.–12:10 p.m.; 12:20 p.m.–1:35 p.m.

- NSB Chair's Welcome
- Swearing-In New Members of the Class 2020–2026
- NSF Director's Remarks
- NSB Chair Activity Summary
- *Vision 2030* Implementation Working Group Update
- NSF HBCU Programs Overview
- Framing Black Experiences in Science and Engineering Panel Discussion

Committee on External Engagement (EE)

Open session: 1:35 p.m.–2:15 p.m.

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- NSB Messages on the ''Missing Millions'' and Engaging Partners on *Vision 2030* Roadmap Actions
- Update on NSB Resources for External Engagement
- Honorary Awards 2021 Call for Nominations

Committee on Oversight (CO)

Open session: 2:45 p.m.–4:05 p.m.

- Committee Chair's Opening Remarks
- Approval of Committee Meeting Minutes
- Update on Merit Review Digest
- Vote to approve
- Discussion of Broader Impacts
- Inspector General's Update
- Chief Financial Officer's Update
- Presentation—Enterprise Risk Management

Committee on National Science and Engineering Policy (SEP)

Open session: 4:15 p.m.—5:05 p.m.

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Update on planning for *Indicators 2022*
- Impacts of COVID–19 on *Indicators* Data Availability
- Impacts of COVID–19 on National and International Statistics
- Discussion of *Indicators*-Inspired Policy Messages to Accompany *Vision 2030*

Committee on Strategy (CS)

Open session: 5:15 p.m.–6:45 p.m.

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Update on FY 2020 and FY 2021 Appropriations
- NSF Skilled Technical Workforce Portfolio
- NSF Spectrum Management, Advance Wireless, and Spectrum Innovation Initiative

Thursday, July 30, 2020

Committee on Awards and Facilities (A&F)

Open session: 11:00 a.m.–12:00 p.m.

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Rolling Calendar Year 2020–2021 Schedule of Planned Action and Context Items
- Information Item: COVID–19 Impacts on Polar Science
- Written Item: Update on National Center for Atmospheric Research O&M

Committee on Awards and Facilities (A&F)

Closed session: 12:15 p.m.–2:00 p.m.

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Action Item: National Optical-Infrared Astronomy Research Laboratory
- Written Item: Astronomy Decadal Survey
- Information Item: COVID–19 and Major Facilities Construction
- Information Item: National High Magnetic Field Laboratory Mid-term Update

Committee on Strategy (CS)

Closed session: 2:30 p.m.–3:05 p.m.

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Update on FY 2022 Budget Development

Plenary Board

Closed session: 3:05 p.m.–3:15 p.m.

- NSB Chair's Opening Remarks
- Approval of Prior Minutes
- NSF Director's Remarks
- Closed Committee Reports
- Vote: NOIRLab

Plenary Board

Executive Closed session: 3:15 p.m.–3:30 p.m.

- NSB Chair's Opening Remarks
- Approval of Prior Minutes
- NSF Director's Remarks
  - Personnel updates
- Board Member Award Affirmation

Plenary Board

Open Session: 3:30 p.m.–4:00 p.m.

- NSB Chair's Opening Remarks
- Approval of Prior Minutes
- NSF Director's Remarks
  - Senior Staff Updates
  - Office of Legislative and Public Affairs Update
- Open Committee Reports
- Votes on NSB CY 2021 Schedule and 2019 Merit Review Digest

Meeting Adjourns: 4:00 p.m.

MEETINGS THAT ARE OPEN TO THE PUBLIC:

Wednesday, July 29, 2020

11:00 a.m.–12:10 p.m. Plenary NSB
12:20 p.m.–1:35 p.m. Plenary NSB
1:35 p.m.–2:15 p.m. EE
2:45 p.m.–4:05 p.m. CO
4:15 p.m.–5:05 p.m. SEP
5:15 p.m.–6:45 p.m. CS

Thursday, July 30, 2020

11:00 a.m.–12:00 p.m. A&F
3:30 p.m.–4:00 p.m. Plenary

MEETINGS THAT ARE CLOSED TO THE PUBLIC:

Thursday, July 30, 2020

12:15 p.m.–2:00 p.m. A&F
2:30 p.m.–3:05 p.m. CS
3:05–3:15 p.m. Plenary
3:15 p.m.–3:30 p.m. Plenary Executive

CONTACT PERSONS FOR MORE INFORMATION: The NSB Office contact is Brad Gutierrez, *bgutierr@nsf.gov,* 703–292–7000. The NSB Public Affairs contact is Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490. The following persons will be available to provide technical support in accessing the YouTube video: Angel Ntumy (*antumy@associates.nsf.gov*); Phillip Moulden (*pmoulden@associates.nsf.gov*).

Supplemental Information: Public portions of meetings will be streamed on YouTube so the public can view them. For meetings on Wednesday, July 29 go to: 2020: *https://youtu.be/3CXXjWbwsYE.* For meetings on Thursday, July 30, go to: *https://youtu.be/rjs0ny0zgR4.*

Please refer to the NSB website for additional information. You will find any updated meeting information and schedule updates (time, place, subject matter, or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

Members of the public are advised that the NSB provides some flexibility around meeting times. A meeting may be allowed to run over by as much as 15 minutes if the Chair decides the extra time is warranted. The next meeting will start no later than 15 minutes after the noticed start time. If a meeting ends early, the next meeting may start up to 15 minutes earlier than the noticed start time. At no point will NSB or committee meetings vary from noticed times by more than 15 minutes. Open meetings can also be watched in their entirety later through the YouTube link.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–16252 Filed 7–22–20; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333; NRC–2020–0130]

Exelon Generation Company, LLC James A. FitzPatrick Nuclear Power Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to an August 8, 2019, request from Exelon Generation Company, LLC (Exelon or the licensee). The licensee requested that the James A. FitzPatrick Nuclear Power Plant be granted a permanent exemption from regulations regarding the containment leak rate test to exclude the main steam isolation valve leakage from the leakage rate test measurements.

DATES: The exemption was issued on July 21, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0130 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–2020–0130. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The NRC staff's approval is available in ADAMS under Accession No. ML20140A071.

FOR FURTHER INFORMATION CONTACT: Samson S. Lee, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3168, email: *Samson.Lee@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: July 21, 2020.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption.

Nuclear Regulatory Commission

Docket No. 50–333; Exelon Generation Company, LLC; James A. FitzPatrick Nuclear Power Plant

Exemption

I. Background

Exelon Generation Company, LLC (Exelon or the licensee) is the holder of Renewed Facility Operating License No. DPR–59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). The facility consists of a boiling-water reactor located in Oswego County, New York. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

II. Request/Action

By letter dated August 8, 2019 (Agencywide Documents Access and Management System Accession No. ML19220A043), the licensee requested an exemption from (1) the requirements of Appendix J, Option B, paragraph III.A to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 to allow exclusion of the main steam isolation valve (MSIV) leakage from the overall integrated leakage rate measured when performing a Type A Test, and (2) the requirements of Appendix J, Option B, paragraph III.B to 10 CFR part 50 to allow exclusion of the MSIV leakage rate of the penetration valves subject to Type B and C tests. This exemption is in conjunction with a license amendment request.

Appendix J to 10 CFR part 50 specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leaktight integrity of the primary reactor containment and systems and components that penetrate the containment.

Appendix J, Option B, paragraph III.B to 10 CFR part 50 requires, in part, that the overall integrated leakage rate must not exceed the allowable leakage rate with margin as specified in the facility's TSs. The overall integrated leakage rate is defined in Appendix J to 10 CFR part 50 as ''the total leakage rate through all tested leakage paths, including containment welds, valves, fittings, and components that penetrate the containment system.'' This includes the contribution from MSIV leakage.

Appendix J, Option B, paragraph III.B to 10 CFR part 50 requires, in part, that the sum of the leakage rates at accident pressure of Type B tests and pathway leakage rates from Type C tests be less than the performance criterion with margin, as specified in the facility's TSs. The licensee requests an exemption from this requirement to allow exclusion of the MSIV leakage rate of the penetration valves subject to Type B and C tests.

Appendix J to 10 CFR part 50 testing ensures primary containment leakage following a design-basis loss-of-coolant accident (LOCA) will be within the allowable leakage limits. The licensee requests this exemption because the radiological dose consequences of MSIV leakage for FitzPatrick are modeled as a separate primary containment release path to the environment that bypasses secondary containment. The LOCA dose calculation assumes all MSIV leakage migrates to the turbine building. However, if MSIV leakage were also included as part of the primary-to-secondary containment modeling, it would be ''double-counted.''

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or . . . .''

A. The Exemption Is Authorized by Law

The exemption would permit exclusion of the MSIV contributions from the overall integrated leakage rate (Type A) test measurement and from the sum of the leakage rates from local leakage rate (Type B and C) tests.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of Appendix J to 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The underlying purposes of Appendix J to 10 CFR part 50 are to assure that containment leaktight integrity is maintained (a) as tight as reasonably achievable, and (b) sufficiently tight so as to limit effluent release to values bounded by the analyses of radiological dose consequences of design-basis accidents.

The licensee's exemption request was submitted in conjunction with an application for a TS amendment to increase the allowable leak rate for the MSIVs in adopting the alternative source term (AST) in accordance with 10 CFR 50.67. The amendment will be issued concurrently with this exemption as License Amendment No. 338. In the amendment, the NRC approves the use of the AST in the calculations of the radiological dose consequences of design-basis accidents for FitzPatrick. The MSIV leakage for the design-basis accident analysis has been accounted for separately from the overall leakage

associated with the primary containment boundary (Type A) and local leakage rate (Type B and C). The radiological dose consequence analysis evaluates the MSIV leakage separately as migration to the turbine building that bypasses the secondary containment. The inclusion of MSIV leakage as part of Type A and as part of Type B and C test results is not necessary to ensure the actual radiological dose consequences of design-basis accidents remain below the regulatory limit. With the exemption, the FitzPatrick primary containment leakage test program would more closely align with the assumptions used in associated accident consequence analyses. The exemption would not remove the MSIVs from the requirements of leakage testing. The MSIVs would continue to be tested under the FitzPatrick TS for primary containment leakage rate testing with an allowable leakage rate that is within the licensee's radiological dose analysis. Because the staff finds the licensee's radiological dose consequences meet the criteria in 10 CFR 50.67, the exemption presents no undue risk in public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The exemption would permit exclusion of the MSIV leakage contributions from the overall integrated leakage rate (Type A) test measurement and from the sum of the leakage rates from local leakage rate (Type B and C) tests. This change to accounting for leakage rate measurement has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

D. Special Circumstances

Special circumstances in accordance with 10 CFR 50.12(a)(2) are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR part 50, Appendix J, Option B, paragraphs lll.A and III.B is to ensure the radiological consequences of design-basis accidents remain below those previously evaluated and accepted, as demonstrated by the actual, periodic measurement of containment leakage (Type A) and local leakage rate measurement (Type B and C).

Although Type A and Type B and C leakage tests measure the associated leakages, inclusion of the MSIV leakage results in double-counting at FitzPatrick, once as a part of the actual containment leakage and again as part of MSIV leakage used in dose calculations. This is because FitzPatrick's radiological dose consequence analysis addresses MSIV leakage separately as migration to the turbine building that bypasses the secondary containment. The MSIV leakages are periodically measured as part of the Appendix J to the 10 CFR part 50 program to ensure the leakage rates will not exceed the TS limit, which is the maximum rate assumed in the safety analysis for radiological dose consequences. Since the MSIV leakage is considered a separate leakage path and its effects are specifically accounted for in the dose analysis, it is appropriate to exclude MSIV leakage from Type A and Type B and C test result totals. Therefore, requiring inclusion of MSIV leakage in the Type A and Type B and C leakage is not necessary to achieve the underlying purpose of the rule.

Because compliance with 10 CFR part 50, Appendix J, Option B, paragraphs lII.A and III.B, is not necessary to achieve the underlying purpose of the requirements, the special circumstances required by 10 CFR 50.12(a)(2) for the granting of an exemption from 10 CFR part 50, Appendix J, Option B, paragraphs III.A and III.B exist.

IV. Environmental Considerations

The NRC staff determined that the issuance of the requested exemption meets the provisions for a categorical exclusion from the preparation of an environmental impact statement or environmental assessment, pursuant to 10 CFR 51.22(c)(9), because the exemption is from a requirement with respect to the installation or use of a facility component located within the restricted area, as defined in 10 CFR part 20, and the issuance of the exemption involves: (i) No significant hazards consideration, (ii) no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and (iii) no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption. The basis for the NRC staff's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(9)(i) through (iii).

Requirements in 10 CFR 51.22(c)(9)(i)

The NRC staff evaluated whether the exemption involves no significant hazards consideration by using the standards in 10 CFR 50.92(c), as presented below:

1. Does the requested exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed exemption would allow FitzPatrick to exclude the MSIV leakage contributions from the overall integrated leakage rate (Type A) test measurement and from the sum of the leakage rates from local leakage rate (Type B and C) tests as required by 10 CFR part 50, Appendix J. The licensee's evaluation of the allowable leakage rate for the MSIVs is based on adopting the AST in accordance with 10 CFR 50.67. The MSIV leakage is treated separately from the remainder of the assumed leakage from primary containment in the LOCA analysis. The Appendix J to 10 CFR part 50 testing ensures primary containment leakage following a design-basis LOCA will be within the allowable leakage limits specified in the facility's TSs and assumed in the safety analysis for determining radiological dose consequences. The MSIV leakage effluent would be treated as a different pathway to the environment when compared to a typical containment penetration. The MSIV leakage would bypass secondary containment and instead would migrate to the turbine building. The proposed exemption from Appendix J to 10 CFR part 50 would separate MSIV leakage from other containment leakage and is consistent with the radiological dose consequence analysis. Otherwise, the MSIV leakage would be ''double-counted'' because of the different pathways. Since design-basis accident initiators are not being altered by the proposed exemption, the probability of an accident previously evaluated is not affected. Also, the consequences of previously evaluated accidents remain within the regulatory limits.

Therefore, the proposed exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the requested exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The underlying purpose of Appendix J to 10 CFR part 50 is to ensure that the radiological dose consequences of design-basis accidents remain below the applicable regulatory limits and are supported by the actual periodic measurement of containment leakage. The proposed exemption would treat the MSIV leakage separately from the remainder of the assumed leakage from primary containment based on the radiological dose consequence analysis

in accordance with 10 CFR 50.67. No plant configuration changes are required. Measuring the MSIV leakage separately to ensure it is within limits of the radiological dose consequence analysis does not create initiators or precursors of a new or different kind of accident.

Therefore, the proposed exemption does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the requested exemption involve a significant reduction in a margin of safety?

No. The proposed exemption from Appendix J to 10 CFR part 50 would separate MSIV leakage from other containment leakage based on the radiological dose consequence analysis for the design-basis LOCA through application of the AST (10 CFR 50.67). Safety margins have been evaluated and analytical conservatisms have been utilized to ensure that the radiological dose consequence analysis adequately bounds the postulated limiting event scenario. Approval of the proposed exemption request would align the FitzPatrick TS limits with the LOCA dose consequence analysis.

Therefore, the proposed exemption does not involve a significant reduction in a margin of safety.

Based on the evaluation above, the NRC staff has determined that the proposed exemption involves no significant hazards consideration. Therefore, the requirements of 10 CFR 51.22(c)(9)(i) are met.

Requirements in 10 CFR 51.22(c)(9)(ii) and (iii)

The proposed exemption would allow FitzPatrick to treat MSIV leakage separately from other containment leakage. The MSIV leakage for the FitzPatrick design-basis accident analysis has been accounted for separately in the AST analysis. Approval of the proposed exemption request would align the TS limits with the radiological dose consequence calculation. The exemption does not modify plant operations. The MSIVs would continue to be tested under the FitzPatrick TS for primary containment leakage rate testing with an allowable leakage rate that is within the licensee's radiological dose analysis. Because the NRC staff finds the MSIV leakage radiological dose consequence analysis meets the limits in 10 CFR 50.67, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(9)(ii) and (iii) are met.

V. Conclusions.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; also, special circumstances are present. Therefore, the Commission hereby grants to Exelon an exemption from the requirements of 10 CFR part 50, Appendix J, Option B, paragraphs lll.A and III.B, for FitzPatrick.

Dated: July 21, 2020.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–16116 Filed 7–23–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483; NRC–2020–0167]

Union Electric Company; Callaway Plant, Unit No.1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. NPF–30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant, Unit No. 1 (Callaway). Due to the COVID–19 public health emergency, the proposed one-time amendment would revise Callaway Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Program,'' to defer the SG tube inspection currently scheduled during Refueling Outage (RFO) 24, in the fall of 2020, to RFO 25, scheduled for the spring of 2022. For this amendment request, the NRC proposes to determine that it involves no significant hazards consideration. Because this amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by August 24, 2020. A request for a hearing or petitions for leave to intervene must be filed by September 22, 2020. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by August 3, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0167. 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.
- *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: Mahesh Chawla, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8371, email: *Mahesh.Chawla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0167 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–2020–0167.
- *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 license amendment request dated June 26, 2020, is available in ADAMS Package Accession No. ML20178A668.

B. Submitting Comments

Please include Docket ID NRC–2020–0167 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. NPF–30, issued to Union Electric Company (the licensee), for operation of Callaway, located in Callaway County, Missouri.

The proposed one-time amendment would revise Callaway TS 5.5.9, in order to defer the SG inspection currently required to be performed during RFO 24, which is required to start in the fall of 2020, to RFO 25, which is scheduled for the spring of 2022.

Deferral of the required SG tube inspection is necessitated by COVID–19 for which a national public health emergency was declared on March 13, 2020. The upcoming steam generator inspection would require the working together, in close quarters, of numerous employees and vendor personnel from other States and areas. This deferral is being requested in the interest of personnel safety and to preclude the potential for transmittal and spread of the COVID–19 virus.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Does] the proposed [change] involve a significant increase in the probability consequences of an accident previously evaluated?

Response: No.

The proposed change calls for a one-time change in inspection frequencies for steam generator tube inspections. Inspection frequencies themselves are not an initiator to a steam generator tube rupture accident or any other accident previously evaluated. However, the test frequency can impact the likelihood of a failure going undetected. In this case, the likelihood has been evaluated, as supported by the referenced and described Operational Assessment, and shown to be minimal. As a result, the probability of any accident previously evaluated is not significantly increased.

The steam generator tubes inspected by the SG Program will continue to be required to meet the SG Program performance criteria and to be capable of performing any functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [Does] the proposed [change] create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change calls for a one-time change in inspection frequencies for steam generator tube inspections and associated reporting requirements. The proposed change does not alter the design function or operation of the steam generators or the ability of a SG to perform the design function. The SG tubes continue to be required to meet the SG Program performance criteria. The proposed change does not create the possibility of a new or different kind of accident since the change does not introduce any failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. [Does] the proposed [change] involve a significant reduction in a margin of safety?

Response: No.

The proposed change calls for a one-time change in inspection frequencies for SG tube inspections and associated reporting requirements. The proposed change does not change any of the controlling values of parameters used to avoid exceeding regulatory or licensing limits. The proposed change does not affect a design basis or safety limit, or any controlling value for a parameter established in the FSAR [Final Safety Analysis Report] or the license.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations

are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the

NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated June 26, 2020.

Attorney for licensee: Jay Silberg, Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW, Washington, DC 20037.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. *Review of Grants of Access.* A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: July 20, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2020–16006 Filed 7–23–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 43625, July 17, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, July 22, 2020 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, July 22, 2020 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 22, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–16218 Filed 7–22–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89343; File No. SR–NASDAQ–2020–041]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118(a)

July 20, 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 July 9, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's schedule of credits, as set forth in Equity 7, Section 118(a) of the Exchange's Rulebook.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the schedule of credits it provides to members, pursuant to Equity 7, Section 118(a), in several respects.

First, the Exchange proposes to raise its requirements to qualify for an existing credit of $0.00305 per share executed that it provides to a member: (i) With shares of liquidity provided in all securities during the month representing at least 0.60% of Consolidated Volume [3] during the month, through one or more of its Nasdaq Market Center MPIDs; (ii) which adds Nasdaq Options Market (''NOM'') Market Maker [4] liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.10% or more of total industry average daily volume (''ADV'') in the customer clearing range for equity and ETF option contracts per day in a month on NOM; and (iii) which adds Customer,[5] Professional,[6] Firm,[7] Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.50% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a

[3] Pursuant to Equity 7, Section 118(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member's trading activity.

[4] The term ''NOM Market Maker'' means a broker-dealer registered with NOM for the purpose of making markets in options contracts traded on NOM.

[5] The term ''Customer'' means a broker-dealer or a person that is not a broker or dealer in securities. *See* Options 1, Section 1(a)(15).

[6] A ''Professional'' is defined in Options 1, Section 1(a)(47) of the NOM rules as ''any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).''

[7] The term ''Firm'' applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

month on NOM. Specifically, the Exchange proposes to raise the qualifying 0.60% Consolidated Volume threshold to 0.95% and the qualifying 0.10% ADV threshold to 0.20%. The Exchange intends to raise the first of these qualification thresholds to incentivize members to increase the extent of their liquidity adding activity on the Exchange to qualify for and to continue to qualify for this credit. The Exchange intends to raise the second of these thresholds to incentivize members that also act as NOM Market Makers to increase the extent of their liquidity providing activity on NOM. With these proposed changes, the Exchange intends to improve the quality of both its equities market and also NOM.

Second, the Exchange proposes to provide a new credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) of $0.00295 per share executed to a member, through one or more of its Nasdaq Market Center MPIDs: (i) With shares of liquidity provided in all securities during the month representing at least 0.50% of Consolidated Volume during the month; (ii) which adds at least 0.35% of Consolidated Volume during the month in securities in Tape C; and (iii) which adds at least 0.15% of Consolidated Volume during the month in Designated Retail Orders [8] for securities in any Tape. The purpose of this credit is to provide members with a new incentive to add significant amounts of liquidity to the Exchange and, in particular, to add significant volumes of liquidity in securities in Tape C and in retail orders in securities in all Tapes. An increase in liquidity adding activity on the Exchange would help to improve the quality of the market for all participants, including but not limited to retail investors.

Lastly, the Exchange proposes to adopt a supplemental $0.00005 per share executed credit for displayed quotes/orders (other than Supplemental Orders) that add liquidity for a member, through one or more of its Nasdaq Market Center MPIDs: (i) With shares of liquidity provided in all securities during the month representing at least 0.50% of Consolidated Volume during the month; (ii) which adds at least 0.35% of Consolidated Volume during the month in securities in Tape C; (iii) which adds at least 0.15% of Consolidated Volume during the month in Designated Retail Orders for securities in any Tape; and (iv) which achieves at least a 60% add to total volume (adding and removing) ratio during a month. The Exchange refers to this proposed credit as ''supplemental'' because members may earn it in addition to other credits. The Exchange intends for the supplemental credit to provide a further incentive for members to increase the proportion of their activity on the Exchange that is attributable to adding liquidity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [11]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

In particular, the Exchange proposes to raise two of its thresholds to qualify for its $0.00305 per share executed credit as a reasonable means of helping to further increase liquidity on both the Exchange and NOM, which if successful, will also improve the quality of both markets. Furthermore, the Exchange notes that the activity of members that currently qualify for this credit has grown, both on the Exchange and on NOM, such that an increase in credit qualifying criteria is now needed

[8] A ''Designated Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it as such, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a ''natural person'' can include orders on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as Designated Retail Orders comply with these requirements. Orders may be designated on an order-by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

to incentivize these market makers to further increase their liquidity providing activity.

The Exchange also believes that it is reasonable to establish a new $0.00295 per share executed credit as a means of incentivizing members to provide meaningful amounts of liquidity to the Exchange, including in securities in Tape C as well as in retail orders in securities in any Tape. To the extent that the Exchange succeeds in increasing liquidity adding activity on the Exchange, including in securities in Tape C and in attracting additional retail order flow, then the Exchange would experience improvements in its market quality, which would benefit all market participants.

For similar reasons, the Exchange believes that it is reasonable to establish a $0.00005 per share executed supplemental credit to members that achieve at least a 60% ratio of liquidity adding activity to total activity on the Exchange during a month, in addition to meeting the threshold of the new $0.00295 credit. This supplemental credit will serve as a heightened incentive for members to act as net adders of liquidity on the Exchange. Again, if this incentive works as intended, the Exchange believes that the quality of the market will improve accordingly.

The Exchange notes that those participants that are dissatisfied with the proposed new and amended credits are free to shift their order flow to competing venues.

The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its credits fairly among its market participants.

In particular, it is equitable for the Exchange to raise two of its thresholds to qualify for its $0.00305 per share executed credit because the activity of members that currently qualify for this credit has grown, both on the Exchange and on NOM, such that an increase in credit qualifying criteria is now needed to incentivize these market makers to further increase their liquidity providing activity. An increase in liquidity adding activity on the Exchange and NOM would improve the quality of both markets, to the benefit of all participants.

The Exchange also believes that it is equitable to establish a new $0.00295 per share executed credit. Again, this proposed credit stands to improve the market quality of the Exchange, to the benefit of all participants, by incentivizing members to provide meaningful amounts of liquidity to the Exchange, including in securities in Tape C as well as in retail orders in securities in any Tape. The Exchange also believes that it is equitable to target the credit, in part, to increased activity in Designated Retail Orders, because attracting retail order flow stands to benefit not only retail investors, but also others with whom additional retail liquidity can interact. Likewise, it is equitable to target the credit, in part, to liquidity adding activity in securities in Tape C, because the Exchange believes that the market for such securities would benefit from additional liquidity. The Exchange notes that it has limited funds to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective at improving market quality in areas that the Exchange determines are in need of improvement.

For similar reasons, the Exchange believes that it is equitable to establish a $0.00005 per share executed supplemental credit to members that achieve at least a 60% ratio of liquidity adding activity to total activity on the Exchange during a month, in addition to meeting the requirements of the new $0.00295 credit. It is equitable to target the supplemental credit at members who act as net providers of liquidity to the Exchange because such members are most apt to help the Exchange to achieve its objective of increasing its pool of liquidity.

The Proposed Amended Credits Are Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Although the Exchange's proposal to raise the qualifying criteria for its $0.00305 per share executed credit will require members to add more liquidity to the Exchange and on NOM than is currently required to qualify for this credit, any resulting increase in liquidity on the Exchange will improve market-wide quality and price discovery, to the benefit of all participants. Moreover, to the extent that the proposal causes NOM Market Makers to increase the extent of their liquidity adding activity on NOM, NOM market quality will improve, and all NOM participants will benefit.

The Exchange also believes that its proposed $0.00295 per share executed credit is not unfairly discriminatory. Again, this proposed credit stands to improve the overall market quality of the Exchange, to the benefit of all participants, by incentivizing members to provide meaningful amounts of liquidity to the Exchange, including in securities in Tape C as well as in retail orders in securities in any Tape. It is not unfairly discriminatory to target the credit, in part, to increased activity in Designated Retail Orders, because attracting retail order flow stands to benefit not only retail investors, but also others with whom additional retail liquidity can interact. Likewise, it is not unfairly discriminatory to target the credit, in part, to liquidity adding activity in securities in Tape C, because the Exchange believes that the market for such securities would benefit from additional liquidity. The Exchange notes that it has limited funds to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective at improving market quality in areas that the Exchange determines are in need of improvement.

For similar reasons, the Exchange believes that its proposed $0.00005 per share executed supplemental credit is not unfairly discriminatory. Although the Exchange proposes to target the supplemental credit at net adders of liquidity to the Exchange, it notes that all participants will benefit to the extent that this credit leads to an improvement in overall market quality.

Finally, the Exchange notes that any participant that does not find the amended credits to be sufficiently attractive is free to shift its order flow to a competing venue.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of

Exchange participant at a competitive disadvantage. To the contrary, the proposed changes will provides opportunities for members to receive new and amended credits based on their market-improving behavior. Any member may elect to provide the levels of market activity required in order to receive the new or amended credits.

Moreover, members are free to trade on other venues to the extent they believe that the credits provided are too low or the qualification criteria are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

The Exchange believes that its proposed modification to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit changes in this market may impose any burden on competition is extremely limited.

The proposed amended credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 42% of industry volume for the month of May 2020.

The Exchange's proposals are pro-competitive in that the Exchange intends for them to increase liquidity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–041 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–NASDAQ–2020–041. 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–NASDAQ–2020–041, and should be submitted on or before August 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16024 Filed 7–23–20; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89341; File No. SR–Phlx–2020–36]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Equity 7, Section 3

July 20, 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 July 9, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's pricing schedule at Equity 7, Section 3.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide additional credits to the Qualified Market Maker (''QMM'') Program. More specifically, the Exchange proposes to provide a credit of $0.0003 per share executed in Tape A securities and a credit of $0.0002 per share executed in Tape B and Tape C securities with respect to all displayed orders of a QMM in securities priced at $1 or more per share that provide liquidity, provided that the QMM provides 0.12% or more of total Consolidated Volume during the month and quotes the NBBO at least 10% of the time during Market Hours in an average of at least 850 securities per day during a month. Such credit will be in addition to any credit provided under Equity 7, Section 3. The Exchange believes these new credits will help improve market quality on its platform, as discussed below.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposed additional credits provided to its QMMs are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [5]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [6]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

In particular, the Exchange proposes to add an additional QMM rebate that would provide a credit of $0.0003 per share executed in Tape A and a credit of $0.0002 per share executed in Tape B and Tape C with the goal of increasing the overall incentive to QMMs to further increase their liquidity addition activity on the Exchange. The proposal will also provide an incentive for QMMs to add liquidity at the NBBO in more securities, which is intended to improve market quality. To the extent that this proposed change leads to an increase in overall liquidity activity on the Exchange and more competitive pricing, this will improve the quality of the Exchange's market and increase its attractiveness to existing and prospective participants.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its proposed credits fairly among its market participants. The proposal will provide a QMM with an additional opportunity to receive credits for adding liquidity to the Exchange. It is equitable for the Exchange to provide an additional means for QMMs to receive credits whose orders add liquidity to the Exchange as a means of incentivizing increased liquidity addition activity. An increase in overall liquidity addition activity on the Exchange will improve the quality of the Exchange's equity market and increase its attractiveness to existing and prospective participants. Furthermore, it is equitable for the Exchange to propose credit for participants with orders in securities in Tapes A due to the Exchange's goal to specifically promote increased liquidity in securities in Tape A. An increase in overall liquidity adding activity on the Exchange will improve the quality of the PSX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange's proposal to add additional credits to the QMM Program is not unfairly discriminatory because any member organization may quote at the NBBO at the levels required by the proposed additional credit criteria and may provide the level of liquidity required by the proposed additional credit criteria, and in fact, the proposed additional credits will not only enable a member organization to meet the qualifications for a QMM, it would also enable the member organization to obtain a credit in addition to any credit provided for under Equity 7, Section 3.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participants at a competitive disadvantage. The Exchange's proposed credit for quoting at the NBBO and providing liquidity will not place any burden on intramarket competition because all members will have the opportunity to obtain the additional proposed credits if the member increases liquidity and quotes at the NBBO, which will further improve overall market quality.

Moreover, the Exchange's proposal to modify its QMM Program will not burden intramarket competition because the proposed additional credits within the QMM Program will provide members with an added incentive to continue to provide all member organizations with an opportunity to obtain supplemental credits for transactions if they improve the market by providing significant quoting at the NBBO in a large number of securities which the Exchange believes will improve market quality.

Intermarket Competition

Addressing whether the proposed credits could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modification to its QMM Program will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems that trade national market system stock. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which new credits in this market may impose any burden on competition is extremely limited.

The proposed credits for adding liquidity are reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 41% of industry volume for the month of June 2020.

In sum, the Exchange intends for the proposed credits to increase member incentives to add liquidity to the Exchange and to contribute to market quality, which is reflective of fierce competition for order flow noted above; however, if the proposed credit and QMM Program incentives are unattractive to market participants, it is likely that the Exchange will either fail to increase its market share or even lose market share as a result. Accordingly, the Exchange does not believe that the proposed new credits will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2020–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2020–36, and should be submitted on or before August 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16021 Filed 7–23–20; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10804; 34–89353; File No. 265–32]

SEC Small Business Capital Formation Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Small Business Capital Formation Advisory Committee, established pursuant to Section 40 of the Securities Exchange Act of 1934 as added by the SEC Small Business Advocate Act of 2016, is providing notice that it will hold a public meeting by videoconference. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Tuesday, August 4, 2020, from 10:00 a.m. to 3:00 p.m. (ET) and will be open to the public. Written statements should be received on or before August 4, 2020.

ADDRESSES: The meeting will be conducted by remote means (videoconference). Members of the public may attend the meeting by viewing the webcast on the Commission's website at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–32 on the subject line; or

Paper Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–32. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the SEC's website at *www.sec.gov.*

Statements also 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. (ET). All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, Office of the Advocate for Small Business Capital Formation, at (202) 551–5407, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Persons needing special accommodations because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

Dated: July 21, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–16063 Filed 7–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, July 29, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 22, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–16217 Filed 7–22–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89351; File No. SR–ICEEU–2020–011]

Self-Regulatory Organizations; ICE Clear Europe Limited ("ICE Clear Europe"); Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to Amendments to Delivery Fees on UK Electricity Futures Contracts and Amendments to Clearing Fees of Certain Natural Gas Spot and Natural Gas Daily Futures Contracts

July 20, 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 July 15, 2020, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'') proposes rule changes relating to (i) amendments to delivery fees on UK electricity futures contracts and (ii) amendments to clearing fees of certain natural gas spot and natural gas daily futures contracts. The proposed amendments do not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule changes is for ICE Clear Europe to (i) reduce the delivery fees associated with UK electricity futures to better reflect the actual variable cost charged by the transmission system operator through Elexon;[6] and (ii) increase exchange and clearing fees in combination with removing the cash settlement and delivery charges for a number of natural gas spot and natural gas daily futures contracts. Attached as Exhibit 5 is an attachment containing tables listing the new fee schedules and a Circular in advance of the proposed effective date. The new fees are intended to come into effect on 01 August 2020 subject to regulatory approval. The proposed revisions to the fees are described in detail as follows.

The fee currently charged for the delivery of the UK electricity futures cleared by ICE Clear Europe (GBP0.00450/MWh) is nine times higher than the actual variable costs for the delivery service provided by the transmissions system operator through Elexon (GBP0.00050/MWh). Accordingly, ICE Clear Europe is proposing to decrease the delivery fee for the following products:

Product name	Product name	Type	Trading venue (MIC)	Clearing venue
UBL	UK Base Electricity Future (Gregorian)	Daily Future	IFEU	ICEU.
UPL	UK Peak Electricity Future (Gregorian)	Daily Future	IFEU	ICEU.

Please see fee schedule and proposed change below:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules.

[6] Elexon is known as the balance and settlement code company for the UK electricity market and is responsible for processing payments between generators and suppliers after comparing the amount they said they would consume with actual volumes (*https://www.elexon.co.uk/*).

Fee type	Trade type	Current fee	Proposed fee	Currency	UoM
Exchange fee	EFP/EFS/Block	0.00050	0.00050	GBP	MWh.
Clearing fee	EFP/EFS/Block	0.00450	0.00450	GBP	MWh.
Exchange fee	Futures	0.00150	0.00150	GBP	MWh.
Clearing fee	Futures	0.00350	0.00350	GBP	MWh.
Cash settlement		n/a	n/a	GBP	MWh.
Deliveries		0.00450.	*0.00050*	GBP	MWh.

The proposed changes to ICE Clear Europe's exchange and clearing fees in combination with removing the cash settlement and delivery charges will apply to the following products:

Product name	Product name	Type	Trading venue (MIC)	Clearing venue
TFE	Dutch TTF Gas Daily Futures	Daily Future	NDEX	ICEU.
NBD	UK Natural Gas Daily Future	Daily Future	IFEU	ICEU.
EZH	Belgian ZTP Gas Spot	Spot	NDXS	ICEU.
EZL	Belgian ZTPL Gas Spot	Spot	NDXS	ICEU.
ETT	TTF Gas Spot	Spot	NDXS	ICEU.
ENB	UK OCM Gas Spot	Spot	NDCM	ICEU.

The proposal, which follows consultation with market participants, involves removing the cash settlement and delivery charges for these contracts and increasing the exchange and clearing fees (whilst maintaining the existing ratio between execution and clearing).

The table below sets out the current fees:

Fees	Trade type	Current Fees					
		NDEX	NDXS	NDXS	NDCM	NDCM	IFEU
			08–18	18–08	08–18	18–08	
		EUR/MWh			GBPp/therm		
Exchange fee	EFP/EFS/Block	0.00038	n/a	n/a	n/a	n/a	0.00025
Clearing fee	EFP/EFS/Block	0.00337	n/a	n/a	n/a	n/a	0.00225
Exchange fee	Futures	0.00113	0.00113	0.00375	0.00100	0.00300	0.00080
Clearing fee	Futures	0.00262	0.00262	0.00750	0.00200	0.00600	0.00170
Cash settlement		n/a	n/a	n/a	n/a	n/a	0.00050
Deliveries		0.00200	n/a	n/a	n/a	n/a	0.00500

The table below sets out the proposed changes to the fees (with changes in italics for ease of review):

Fees	Trade type	Proposed Fees					
		NDEX	NDXS	NDXS	NDCM	NDCM	IFEU
			08–18	18–08	08–18	18–08	
		EUR/MWh			GBPp/therm		
Exchange fee	EFP/EFS/Block	*0.00125*	n/a	n/a	n/a	n/a	*0.00050*
Clearing fee	EFP/EFS/Block	*0.01125*	n/a	n/a	n/a	n/a	*0.00450*
Exchange fee	Futures	*0.00417*	*0.00417*	*0.00833*	*0.00167*	*0.00333*	*0.00170*
Clearing fee	Futures	*0.00833*	*0.00833*	*0.01667*	*0.00333*	*0.00667*	*0.00330*
Cash settlement		n/a	n/a	n/a	n/a	n/a	*n/a*
Deliveries		*n/a*	n/a	n/a	n/a	n/a	*n/a*

Please note that the fees on the website are in GBP/lot (=1,000 therms), whilst the fees in the filing are equal to 1/10 of this as are expressed in GBPp (pence)/therm.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of the Act, including Section 17A of the Act[7] and regulations thereunder applicable to it. ICE Clear Europe's fees are imposed at the product level on a per transaction

[7] 15 U.S.C. 78q–1.

basis (as are the applicable Exchange fees). As a result, the fees apply equally to all market participants who trade/clear the Contracts. ICE Clear Europe believes that the changes in fees provides appropriate incentives and rewards to market participants for the use of the Clearing House's clearing services for the Contracts. ICE Clear Europe believes that the current delivery fee in relation to UK electricity contracts could better reflect the actual variable cost charged by the transmission system operator through Elexon, and therefore plans to reduce the delivery fee. Following consultation with market participants, ICE Clear Europe also believes that the current fees in relation to the natural gas products should be increased, to properly compensate ICE Clear Europe for the risks, costs and expenses of clearing the Contracts. ICE Clear Europe believes that the increases in the fees are relatively modest in size. ICE Clear Europe has determined that the revised fees will provide a more appropriate balance between the costs of clearing and expenses incurred by ICE Clear Europe. As such, in ICE Clear Europe's view, the amendments are consistent with the equitable allocation of reasonable dues, fees and other charges among its Clearing Members and other market participants, within the meaning of Section 17A(b)(3)(D) of the Act,[8] and further do not unfairly discriminate among such participants in their use of the Clearing House, within the meaning of Section 17A(b)(3)(F) of the Act.[9]

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. As discussed above, because fees are imposed on a per transaction basis at the product level, the changes to the fees are applied equally to all those market participants who trade and/or clear the Contracts. Although the amendments with respect to the natural gas contracts may result in higher fees for particular Clearing Members because of the higher fee on specific products, ICE Clear Europe believes that the new fees would be set at an appropriate level to better reflect the cost that the Clearing House takes on by facilitating the relevant clearing services. ICE Clear Europe does not believe that the amendments would adversely affect the ability of such Clearing Members or other market participants generally to access clearing services for the Contracts. Further, since the revised fees will apply to all Clearing Members that clear the products, ICE Clear Europe believes that the amendments would not otherwise affect competition among Clearing Members, adversely affect the market for clearing services or limit market participants' choices for obtaining clearing services.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and paragraph (f) of Rule 19b–4[11] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2020–011 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–ICEEU–2020–011. 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 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/notices/Notices.shtml?regulatoryFilings.* 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–2020–011 and should be submitted on or before August 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16022 Filed 7–23–20; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78q–1(b)(3)(D). Under this provision, ''[a] clearing agency shall not be registered unless the Commission determines that—(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.''

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89342; File No. SR–NASDAQ–2020–026]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt a New Requirement Related to the Qualification of Management for Companies From Restrictive Markets

July 20, 2020.

On May 29, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new requirement related to the qualification of management for companies whose business is principally administered in a jurisdiction that has secrecy laws, blocking statutes, national security laws, or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction. The proposed rule change was published for comment in the **Federal Register** on June 12, 2020.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 27, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates September 10, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2020–026).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16019 Filed 7–23–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89028 (June 8, 2020), 85 FR 35967. Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nasdaq-2020-026/srnasdaq2020026.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89344; File No. SR–NASDAQ–2020–028]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend IM–5101–1 (Use of Discretionary Authority) To Deny Listing or Continued Listing or To Apply Additional and More Stringent Criteria to an Applicant or Listed Company Based on Considerations Related to the Company's Auditor or When a Company's Business Is Principally Administered in a Jurisdiction That Is a Restrictive Market

July 20, 2020.

On May 19, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' 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 amend IM–5101–1 (Use of Discretionary Authority) to deny listing or continued listing or to apply additional and more stringent criteria to an applicant or listed company based on considerations related to the company's auditor or when a company's business is principally administered in a jurisdiction that has secrecy laws, blocking statutes, national security laws, or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction. The proposed rule change was published for comment in the **Federal Register** on June 8, 2020.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 23, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates September 6, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2020–028).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16017 Filed 7–23–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88987 (June 2, 2020), 85 FR 34774. Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nasdaq-2020-028/srnasdaq2020028.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60

days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before September 22, 2020.

ADDRESSES: Send all comments to Kelly Jackson, Program Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Kelly Jackson, Program Analyst, 202–205–0108, *kelly.jackson@sba.gov,* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

A small business determined to be non-responsible for award of a specific prime Government contract by a Government contracting office has the right to appeal that decision through the Small Business Administration (SBA). The information contained on this form, as well as, other information developed by SBA, is used in determining whether the decision by the Contracting Officer should be overturned.

Solicitation of Public Comments:

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection:

(1) Title: Small Business Administration Application for Certificate of Competency.

Description of Respondents: Small Businesses.

Form Number: SBA Form 1531.

Total Estimated Annual Responses: 300.

Total Estimated Annual Hour Burden: 2,400.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–16049 Filed 7–23–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before September 22, 2020.

ADDRESSES: Send all comments to Cynthia Pitts, Director, Disaster Administrative Services, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Director, Disaster Administrative Services, *Cynthia.pitts@sba.gov,* 202–205–7570, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Governor of the State U.S. territory or possession affected by a disaster submits this information collection to request that SBA issue a disaster declaration. The information identifies the time, place and nature of the incident and helps SBA to determine whether the regulatory criteria for a disaster declaration have been met, and disaster assistance can be made available to the affected region.

Solicitation of Public Comments:

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection:

(1) Title: Governor's Request for Disaster Declaration.

Description of Respondents: Disaster victim's seeking assistance.

Form Number: N/A.

Total Estimated Annual Responses: 58.

Total Estimated Annual Hour Burden: 1,160.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–16045 Filed 7–23–20; 8:45 am]

BILLING CODE 8026–03–P

STATE DEPARTMENT

Foreign Affairs Policy Board Meeting Notice; Closed Meeting

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the Department of State announces a meeting of the Foreign Affairs Policy Board to take place on August 17, 2020, at the Department of State, Washington, DC

The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) technology tools needed to advance the State Department's mission; and (4) priorities and strategic frameworks for U.S. foreign policy. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

For more information, contact Duncan Walker at (202) 647–2236.

Duncan Walker,

Designated Federal Officer, Office of Policy Planning, Department of State.

[FR Doc. 2020–15979 Filed 7–23–20; 8:45 am]

BILLING CODE 4710–10–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36411]

Arkansas-Oklahoma Railroad Company—Lease and Operation Exemption Including Interchange Commitment—Union Pacific Railroad Company

Arkansas-Oklahoma Railroad Company (AOK), a Class III railroad, has filed a verified notice of exemption pursuant to 49 CFR 1150.41 to continue to lease from Union Pacific Railroad Company (UP) and operate a UP rail line between milepost 445.0 near Brangus Road and milepost 482.0 near Oklahoma City, Okla., a total distance of approximately 37 miles (the Line). AOK states that it has entered into a lease agreement (New Lease) with UP, dated June 19, 2020, that will supersede and replace two existing leases (the Current Leases).[1]

[1] *See Ark.-Okla. R.R.—Lease & Operation Exemption—Union Pac. R.R.,* FD 33897 (STB served July 21, 2000) (between milepost 446.5 and milepost 482.0); *Ark.-Okla. R.R.—Lease & Operation Exemption—Union Pac. R.R.,* FD 35655 (STB served Aug. 22, 2012) (between milepost 445.0 and milepost 446.5).

AOK states that the New Lease extends the term and revises other commercial terms, which will allow AOK to continue to operate the Line for an additional 10 years, with a right to extend the term another 10 years. AOK states that the New Lease will take effect upon the effective date of the exemption and that it will continue to operate under the terms of the Current Leases until the New Lease becomes effective.

AOK certifies that the New Lease contains an interchange commitment that affects interchange with BNSF Railway Company at Shawnee.[2] Accordingly, AOK has provided additional information regarding the interchange commitments, as required by 49 CFR 1150.43(h).

AOK certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III carrier but states that its projected annual revenues will exceed $5 million following the transaction. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed $5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, AOK's verified notice includes a request for waiver of the 60-day advance labor notice requirements. AOK's waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 31, 2020.

All pleadings, referring to Docket No. FD 36411, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on AOK's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to AOK, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirement under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov*.

Decided: July 20, 2020.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–16057 Filed 7–23–20; 8:45 am]

BILLING CODE 4915–01–P

[2] A copy of the New Lease with the interchange commitment was submitted under seal. *See* 49 CFR 1150.43(h)(1).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–55]

Petition for Exemption; Summary of Petition Received; Airbus Helicopters, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 13, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0602 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Megan Blatchford, *Megan.B.Blatchford@faa.gov,* Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 17, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0602.

Petitioner: Airbus Helicopters, Inc.

Section(s) of 14 CFR Affected: § 120.109(a)(1).

Description of Relief Sought: Airbus Helicopters, Inc. (Airbus), seeks relief from § 120.109(a)(1) to allow Airbus to permit employees performing safety-sensitive functions in the Columbus, Mississippi repair station to perform safety-sensitive functions in the Grand Prairie, Texas, repair station, without being subject to additional pre-employment testing.

[FR Doc. 2020–16059 Filed 7–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA)

is amending the system of records currently entitled, ''Education Debt Reduction Program-VA'' (115VA10). VA is amending the system of records by revising the System Number; System Location; System Manager; Record Source Categories; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Retention and Disposal of Records; Physical, Administrative and Procedural Safeguards; Record Access Procedure; and Notification Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than August 24, 2020. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the new system will become effective August 24, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (Note: not a toll-free number). Comments should indicate they are submitted in response to ''Education Debt Reduction Program-VA'' (115VA102). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (Note: not a toll-free number). In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The System Number will be changed from 115VA10 to 115VA10A2 to reflect the current organizational alignment.

The System Location is being amended to replace Austin Automation Center (AAC) with Austin Information Technology Center (AITC). Also being removed, ''Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances.'' which is replaced with ''Address locations for VA facilities may be found at *https://www.va.gov/directory/guide/home.asp.*''

The System Manager, Record Source Categories, Record Access Procedure, and Notification Procedure has been amended to replace, ''Director, Health Care Staff Development and Retention Office (10A2D), Veterans Health Administration, Department of Veterans Affairs, 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112. The telephone number is (504) 589–5267.'' with ''Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102. The telephone number is (405) 552–4346.''

The Routine Uses of Records Maintained in the System has been amended by amending the language in Routine Use #11 which states that disclosure of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

Routine Use #15 is clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine use #16 is being added to state, ''VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach. VA needs this routine use for the data breach response and remedial efforts with another Federal agency.''

The Policies and Practices for Retention and Disposal of Records is being amended to remove, ''Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.'' This section will now state that these records are under the following records schedule; Record Control Schedule (RCS) 10–1 item 1000.40a, Educational Activity Records. Temporary; destroy 7 years after the education activity is closed. (N1–015–11–4, Item 1) or 1140.1. Clinical Trainee Onboarding Case File (CTOCF). Temporary; cutoff, case files at the end of the calendar year in which the academic year is completed. Transfer to Federal Record Center (FRC) when 7 years old. Destroy 25 years after cutoff. (DAA–0015–2016–0004, item 1).

The Physical, Administrative and Procedural Safeguards is being amended to replace Austin Automation Center (AAC) with Austin Information Technology Center (AITC).

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by the Privacy Act and guidelines issued by OMB on December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs approved this document on July 13, 2020 for publication.

Dated: July 21, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Education Debt Reduction Program-VA (115VA10A2)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records will be maintained at the Health Care Staff Development and Retention Office (HCSDRO/10A2A7), Veterans Health Administration, Department of Veterans Affairs (VA), 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112; the Austin Information Technology Center (AITC). Department of Veterans Affairs, 1615 East Woodward Street, Austin, Texas 78772; and the VA health care facilities and VISN offices where scholarship recipients are employed. Address locations for VA health care facilities may be found at *https://www.va.gov/directory/guide/home.asp.* Complete records will be maintained only at the HCSDRO address.

SYSTEM MANAGER(S):

Crystal Cruz, Deputy Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), *Crystal.Cruz@va.gov,* (405) 552–4339, 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 501, 503, 7451, 7452, and 7431–7440.

PURPOSE(S) OF THE SYSTEM:

The records and information may be used for determining and documenting individual applicant eligibility for debt reduction awards; determining the debt reduction payment amounts and the related service periods for award recipients; ensuring that award amounts are consistent with applicable law, regulations and policy; monitoring the employment status of scholarship recipients during their service periods; terminating an employee's participation in the program; and evaluating and reporting program results and effectiveness.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

VA employees who apply for and are granted or denied educational assistance awards under the provisions of the VA Education Debt Reduction Program (EDRP) serving under an appointment under Title 38 U.S.C., Section 7402(b) in a position for which retention of qualified healthcare personnel is difficult.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include: Personal identification information related to the application material, award processes, employment, and EDRP service periods such as (1) name, (2) employing facility number, (3) telephone number(s), (4) social security number, (5) debt reduction payment amounts, (6) dates of service periods, (7) name and address of the lending institution, (8) academic degree obtained for which EDRP funding is requested, (9) name and address of academic institution, (10) original amount of loan, and (11) current loan balance. Most of this information is contained on the application for an EDRP award including the applicant's full name, employing facility number, home and work telephone numbers, social security number, job title, degree obtained for which funding is requested, name and address of the academic institution, and the amount and number of debt reduction payments requested. The EDRP Loan Verification Form contains the candidate's name and social security number, name and address of the lending institution, original loan amount, current loan amount, and the purpose of the loan as stated on the loan application. The EDRP Acceptance of Conditions contains the name of a candidate approved for an award and the authorized number of debt reduction payments and their related amounts.

RECORD SOURCE CATEGORIES:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102. The telephone number is (405) 552–4346.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. Disclosure of any information in this system that is necessary to verify authenticity of the application may be made to lending institutions and other relevant organizations or individuals.

2. Disclosure of any information in this system may be made to a Federal agency in order to determine if an applicant has any obligation under another Federal program that would render the applicant ineligible to participate in the Education Debt Reduction Program.

3. Any information in the system may be used to evaluate and report program results and effectiveness to appropriate officials including members of Congress on a routine and ad hoc basis.

4. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of Title 44, Chapter 29 of the United States Code.

6. Disclosure of information to the Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

7. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

8. Disclosure may be made to the VA appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for duty) examination procedures or Department-filed disability retirement procedures.

9. Disclosure may be made to officials of the Merit Systems Protection Board,

including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions of the Commission as authorized by law or regulation.

11. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

12. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

13. VA may disclose any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

14. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

15. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

16. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper, electronic media and computer printouts.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by use of the award number or an equivalent participant account number assigned by HCSDRO, Social Security Number and the name of the individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are under the following records schedule; Record Control Schedule (RCS) 10–1 item 1000.40a, Educational Activity Records. Temporary; destroy 7 years after the education activity is closed. (N1–015–11–4, Item 1) or 1140.1. Clinical Trainee Onboarding Case File (CTOCF). Temporary; cutoff, case files at the end of the calendar year in which the academic year is completed. Transfer to Federal Record Center (FRC) when 7 years old. Destroy 25 years after cutoff. (DAA–0015–2016–0004, item 1).

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Access to the basic file in HCSDRO is restricted to authorized VA employees and vendors. Access to the office spaces where electronic media is maintained within HCSDRO is further restricted to specifically authorized employees and is protected by contracted building security services. Records (typically computer printouts) at HCSDRO will be kept in locked files and made available only to authorized personnel on a need-to-know basis. During non-working hours the file is locked, and the building is protected by contracted building security services. Records stored on electronic media are maintained on a VA-approved and managed, password protected, secure local area network (LAN) located within HCSDRO office spaces and safeguarded as described above. Records stored on electronic media at Veterans Integrated Service Network (VISN) Offices, VA health care facilities and the AITC in Austin, Texas, are provided equivalent safeguards subject to local policies mandating protection of information subject to Federal safeguards.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102. The telephone number is (405) 552–4346.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such records, should submit a written request or apply in person to Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102. The telephone number is (405) 552–4346.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 74 FR 21432 dated May 8, 2009.

[FR Doc. 2020–16114 Filed 7–23–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice withdrawal.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the withdrawal of a notice that was published in the **Federal Register** on April 24, 2020.

DATES: The notice is withdrawn on July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on April 24, 2020 (85 FR 23139), ''Privacy Act of 1974; System of Records (SOR), Notice of a modified system of records entitled, ''Education Debt Reduction Program-VA'' (115VA10)'', VA was amending the SOR by revising several components of the notice which included the System Number. We are withdrawing the notice because, upon further review we have determined that the accurate System Number is 115VA10A2. The System Number was changed from 115VA10 to 115VA10A2 to reflect the current organizational alignment.

Signing Authority

The Senior Agency Official for Privacy approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs approved this document on July 13, 2020 for publication.

Dated: July 21, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

[FR Doc. 2020–16113 Filed 7–23–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0786]

Agency Information Collection Activity: VR&E Longitudinal Study Survey

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 22, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov* Please refer to ''OMB Control No. 2900–0786'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 112–256, Section 221–225.

Title: Department of Veterans Affairs (VA) VR&E Longitudinal Study Survey.

OMB Control Number: 2900–0786.

Type of Review: Extension of a currently approved collection.

Abstract: As required by Public Law 110–389 Section 334, VBA will continue to collect survey data on individuals who began participating in the VR&E program during fiscal years 2010, 2012, and 2014. VA will conduct a study of this data to determine the long-term positive outcomes of individuals participating in VBA's VR&E program. The purpose of this study is to monitor the effectiveness of VR&E program, so that we can find ways to improve the program and increase the support VA provide to Veterans daily. The data collected in this study is integral to VA submitting a Congressionally-mandated annual report on the long-term outcomes of Veterans who participate in the VR&E program.

Affected Public: Individuals.

Estimated Annual Burden: 2,695 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 8,084.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–16039 Filed 7–23–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee: VA National Academic Affiliations Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal

Advisory Committee Act that the VA National Academic Affiliations Council (NAAC) will meet via conference call on September 17, from 1:00 p.m. to 3:00 p.m. EST. The meeting is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On September 17, 2020, the Council will receive updates about VA's COVID–19 response; receive briefings from its Subcommittees; receive an update about VA's Electronic Health Record Modernization; and discuss other follow-up items. The Council will receive public comments from 2:45 p.m. to 2:55 p.m. EST.

Interested persons may attend and/or present oral statements to the Council. The dial in number to attend the conference call is: 1–800–767–1750. At the prompt, enter access code 12095 then press #. Individuals seeking to present oral statements are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council prior to the meeting or at any time, by email to *Larissa.Emory@va.gov,* or by mail to Larissa A. Emory PMP, CBP, MS, Designated Federal Officer, Office of Academic Affiliations (10X1), 810 Vermont Avenue NW, Washington, DC 20420. Any member of the public wishing to participate or seeking additional information should contact Ms. Emory via email or by phone at (915) 269–0465.

Dated: July 21, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–16070 Filed 7–23–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR) will be held virtually on Wednesday, August 19 and Thursday, August 20, 2020. The meeting sessions are open to the public and are from 10:00 a.m. to 3:00 p.m. EST.

The purpose of the Committee is to provide advice to the Secretary of VA on the rehabilitation needs of Veterans with disabilities and on the administration of VA's rehabilitation programs.

On August 19, 2020, Committee members will welcome members and provide briefings from the Doris Miller Department of Veterans Affairs Medical Center on various tele-health services designed to enhance the rehabilitation potential of Veterans, particularly Veterans in rural areas.

On August 20, 2020, Committee members will receive briefings from the Waco Regional Office on various virtual services designed to enhance the rehabilitation potential of Veterans. Committee members will discuss recommendations to be included in the Committee's next annual comprehensive report.

Time will be allocated for receiving oral comments from the public. Members of the public may submit written statements for review by the Committee to Latrese Arnold, Designated Federal Officer, Veterans Benefits Administration (28), 810 Vermont Avenue NW, Washington, DC 20420, or at *Latrese.Arnold@va.gov*. In the communication, writers must identify themselves and state the organization, association or person(s) they represent. Any member of the public who wishes to attend the virtual meeting must RSVP for details to Latrese Arnold at 202–461–9773 no later than close of business, Monday August 17, 2020, at the above phone number or email address.

Dated: July 20, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–16033 Filed 7–23–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Friday,

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Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Residual Risk and Technology Review; Final Rule

Environmental Protection Agency

40 CFR Part 63

[EPA–HQ–OAR–2017–0015; FRL–10009–60–OAR]

RIN 2060–AT08

National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Lime Manufacturing source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action addressing periods of startup, shutdown, and malfunction (SSM). These final amendments include new provisions requiring electronic reporting. We are finalizing our proposed determination that the risks are acceptable and that the current NESHAP provides an ample margin of safety to protect public health. We determined that there are no developments in practices, processes, or control technologies that necessitate revisions to the standards.

DATES: This final rule is effective on July 24, 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 24, 2020.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0015. All documents in the docket 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 electronically through *https://www.regulations.gov/.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. There is a temporary suspension of mail delivery to the EPA, and no hand deliveries are currently accepted. For further information and updates on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Jim Eddinger, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5426; and email address: *eddinger.jim@epa.gov.* For specific information regarding the risk modeling methodology, contact James Hirtz, 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) 541–0881; and email address: *hirtz.james@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, U.S. EPA Region 5 (Mail Code E–19), 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: (312) 353–6266; and email address: *ayres.sara@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:

ACI activated carbon injection
AEGL acute exposure guideline level
ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
CAA Clean Air Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emission monitoring system
CFR Code of Federal Regulations
CRA Congressional Review Act
D/F dioxins and furans
EPA Environmental Protection Agency
ERPG emergency response planning guideline
ESP electrostatic precipitator
FF fabric filter
FTIR Fourier-transform infrared spectroscopy
HAP hazardous air pollutants(s)
HCl hydrochloric acid
HF hydrofluoric acid
HI hazard index
HQ hazard quotient
IBR incorporation by reference
ICR Information Collection Request
km kilometer
MACT maximum achievable control technology
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
OM&M operations, maintenance, and monitoring
PB-HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PM particulate matter
POM polycyclic organic matter
PRA Paperwork Reduction Act
PS Performance Specification
PSH processed stone handling
REL recommended exposure limit
RFA Regulatory Flexibility Act
RIN Regulatory Information Number
RTR Risk and Technology Review
SSM startup, shutdown, and malfunction
the Court United States Court of Appeals for the District of Columbia Circuit
TOSHI target organ-specific hazard index
tpy tons per year
UMRA Unfunded Mandates Reform Act
VCS voluntary consensus standard

Background information. On September 16, 2019, the EPA proposed revisions to the Lime Manufacturing Plants NESHAP based on our RTR. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule 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 *Summary of Public Comments and Responses for the Lime Manufacturing Plants Residual Risk and Technology Review,* Docket ID No. EPA–HQ–OAR–2017–0015. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

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J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51
K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

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 and source category	NAICS[1] code
Lime Manufacturing Plants	32741, 33111, 3314, 327125

[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 category 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 this 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/lime-manufacturing-plants-national-emission-standards-hazardous-air.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

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 22, 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 reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or 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 84 FR 48708, September 16, 2019.

B. What is the Lime Manufacturing source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Lime Manufacturing Plants NESHAP on January 5, 2004 (69 FR 394). The standards are codified at 40 CFR part 63, subpart AAAAA. The lime manufacturing industry consists of facilities that use a lime kiln to produce lime product from limestone by calcination. The source category covered by this MACT standard currently includes 35 facilities.

As promulgated in 2004, the NESHAP regulates HAP emissions from all new and existing lime manufacturing plants that are major sources, co-located with major sources, or are part of major sources. However, lime manufacturing plants located at pulp and paper mills or at beet sugar factories are not subject to the NESHAP. Other captive lime manufacturing plants, such as (but not limited to) those at steel mills and magnesia production facilities, are subject to the NESHAP. See 67 FR 78053 explaining the basis for these determinations. A lime manufacturing plant is defined as any plant which uses a lime kiln to produce lime product from limestone or other calcareous material by calcination. However, the NESHAP specifically excludes lime kilns that use only calcium carbonate waste sludge from water softening processes as the feedstock.

The NESHAP defines the affected source as follows: Each lime kiln and its associated cooler and each individual processed stone handling (PSH) operations system. The PSH operations system includes all equipment associated with PSH operations beginning at the process stone storage bin(s) or open storage pile(s) and ending where the process stone is fed into the kiln. It includes man-made process stone storage bins (but not open process stone storage piles), conveying system transfer points, bulk loading or unloading systems, screening operations, surge bins, bucket elevators, and belt conveyors. The materials processing operations associated with lime products, lime kiln dust handling, quarry or mining operations, limestone sizing operations, and fuels are not subject to the NESHAP. Finally, lime hydrators and cooler nuisance dust collectors are not included under the definition of affected source under the NESHAP.

The NESHAP established particulate matter (PM) emission limits for lime kilns, coolers, and PSH operations with stacks. The NESHAP also established opacity limits for PSH operations without stacks and for kilns equipped with electrostatic precipitators (ESP) and fabric filters (FF). For kilns equipped with wet scrubbers, the NESHAP established scrubbing liquid flow rate and exhaust gas stream pressure drop limits. PM serves as a surrogate for the non-volatile and semi-volatile metal HAP. The NESHAP also regulates opacity or visible emissions from most of the PSH operations, with opacity also serving as a surrogate for non-volatile and semivolatile HAP metals. Refer to section II.B of the proposal preamble (84 FR 48711, September 16, 2019) for additional information on the HAP emissions regulated by the NESHAP.

C. What changes did we propose for the Lime Manufacturing source category in our September 16, 2019, proposal?

On September 16, 2019, the EPA published a proposed rule in the **Federal Register** for the Lime Manufacturing Plants NESHAP, 40 CFR part 63, subpart AAAAA, that took into consideration the RTR analyses. In the proposed rule, we proposed:

- No revisions to the numerical emission limits based on the RTR;
- revisions to the SSM provisions of the 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;

[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.'').

• a requirement for electronic submittal of notifications, semi-annual reports, and compliance reports (which includes performance test reports); and
• IBR of alternative test methods and references.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Lime Manufacturing source category. This action also finalizes other changes to the NESHAP, including revising the SSM provisions of the NESHAP; a requirement for electronic submittal of notifications, semi-annual reports, compliance reports, and performance test reports; adding an alternative test method to EPA Method 320; and IBR of alternative test methods and references to updated alternative test methods. This action also reflects several changes to the September 2019 proposal in consideration of comments received during the public comment period described in section IV of this preamble.

A. What are the final rule amendments based on the risk review for the Lime Manufacturing source category?

The EPA proposed no changes to 40 CFR part 63, subpart AAAAA NESHAP based on the risk review conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks from the source category are acceptable, the standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to 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 making any revisions to the existing standards under CAA section 112(f), and we are readopting the existing standards.

B. What are the final rule amendments based on the technology review for the Lime Manufacturing source category?

We determined that there are no developments in practices, processes, and control technologies that necessitate revisions to the MACT standards for this source category. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

C. What are the final rule amendments addressing emissions during periods of SSM?

The EPA is finalizing, with some revisions, the proposed amendments to the Lime Manufacturing Plants 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 (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 there must always be a CAA section 112 standard that applies. We are finalizing our proposal to eliminate the SSM exemption in this rule. As detailed in section IV.D of the proposal preamble (84 FR 48727, September 16, 2019), we proposed to require that the emission limitations apply at all times (see 40 CFR 63.7100(a)), consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008).

We have also revised Table 8 to subpart AAAAA of part 63 (the General Provisions applicability table) in several respects, as is explained in more detail below in section IV.C. For example, we have eliminated the incorporation of the General Provisions' requirement that the source develops an SSM plan. We have also eliminated and revised certain recordkeeping and reporting that is related to the SSM exemption as described in detail in the proposal and summarized below in section IV.C. As discussed in the proposal preamble, these revisions are consistent with the requirement in 40 CFR 63.7100(a) that the standards apply at all times. Refer to section IV.C of this preamble for a detailed discussion of these amendments.

The EPA is finalizing standards for startup and shutdown that differ in some respects from the startup and shutdown standards that were proposed. Changes from the proposal to the standards for periods of startup and shutdown being finalized reflect the EPA's re-evaluation of appropriate startup and shutdown standards in light of public comments. The EPA's rationale for those changes is discussed in section IV.C. below.

The proposed definition of ''Startup'' has been revised by changing the wording from ''lime product'' to ''on-specification lime product'' and adding an alternate ending to startup. Commenters stated that the term ''lime product'' is not specific enough and that off-specification product is discharged almost simultaneously upon startup. In addition, the EPA is not finalizing the proposed work practices for periods of startup. For periods of startup, the EPA has instead established opacity emission limits for kilns equipped with FFs or ESPs. The EPA is not establishing different standards for kilns equipped with wet scrubbers during periods of startup and such kilns must comply with the same standard that apply at all other times. Also, during shutdown, kilns equipped with FFs, ESPs, or wet scrubbers must comply with the same standards that apply during normal operation. (See Table 2 of 40 CFR part 63, subpart AAAAA—Startup and Shutdown Emission Limits).

Further, the EPA is not finalizing different standards for malfunctions and sources must meet applicable standards during periods of malfunction. As discussed in the September 16, 2018, 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. Refer to section IV.D of the proposal preamble for further discussion of the EPA's rationale for the decision not to set standards for malfunctions.

D. What other changes have been made to the NESHAP?

Consistent with the proposal, the EPA is finalizing the electronic reporting requirements, specifically that owners or operators of lime manufacturing plants submit electronic copies of required performance test reports, performance evaluation reports, and semiannual compliance reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI).

We are finalizing an alternative test method to EPA Method 320 and incorporating several test methods by reference, as discussed further in section IV.E of this preamble. We are also finalizing additional changes that address technical and editorial corrections, as proposed and as described in section IV.F of this preamble.

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 24, 2020. The compliance date for the revised requirements for affected sources that commenced construction or reconstruction on or before September 16, 2019, is January 20, 2021, with the exception of the vacated SSM exemptions contained in 40 CFR 63.6(f)(1) and (h)(1). We are revising

Table 9 of 40 CFR part 63, subpart AAAAA to clarify that for all affected sources, these exemptions do not apply given the court vacatur in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008). The compliance date for the revised requirements for affected sources that commence construction or reconstruction after September 16, 2019, is July 24, 2020 or upon initial startup, whichever is later. We are finalizing changes, as proposed, that would impact ongoing compliance requirements for 40 CFR part 63, subpart AAAAA. As discussed elsewhere in this preamble, we are finalizing the requirement that performance test results, performance evaluation reports, and the semiannual reports using the new template be submitted electronically. We are also finalizing changes to the requirements for SSM. For example, we are removing the exemption from the requirements to meet the standard during SSM periods and removing the requirement to develop and implement an SSM plan, as proposed. Our experience with similar industries that have been required to convert reporting mechanisms, install necessary hardware, install necessary software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, reliably employ electronic reporting, and convert logistics of reporting processes to different time-reporting parameters, shows that a time period of a minimum of 90 days, and more typically, 180 days, is generally necessary to successfully complete these changes. Our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; evaluate their operations to ensure that they can meet the required standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; adjust parameter monitoring and recording systems to accommodate revisions; and update their operations to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable, and, thus, is finalizing the requirement that existing affected sources be in compliance with all of this regulation's revised requirements within 180 days of the regulation's effective date.

IV. What is the rationale for our final decisions and amendments for the Lime Manufacturing source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, 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 docket.

A. Residual Risk Review for the Lime Manufacturing Source Category

1. What did we propose pursuant to CAA section 112(f) for the Lime Manufacturing source category?

Pursuant to CAA section 112(f), the EPA conducted a risk review and presented the results for the review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the September 16, 2019, proposed rule for the Lime Manufacturing source category (84 FR 48708). The results of the risk assessment are presented briefly in Table 1 of this preamble and in the risk report titled *Residual Risk Assessment for the Lime Manufacturing Plants Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* and sections III and IV of the proposal preamble (84 FR 48708, September 16, 2019) available in the docket for this action.

TABLE 1—INHALATION RISK ASSESSMENT SUMMARY FOR LIME MANUFACTURING [1] SOURCE CATEGORY

Number of facilities [2]	Maximum individual cancer risk (in 1 million) [3] based on . . .		Population at increased risk of cancer ≥ 1-in-1 million based on . . .		Annual cancer incidence (cases per year) based on . . .		Maximum chronic noncancer TOSHI [4] based on . . .		Maximum screening acute noncancer HQ [5] based on actual emissions level
	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	
35	1	2	12	450	0.001	0.003	0.04	0.05	0.6 (REL)

[1] Based on actual and allowable emissions.
[2] Number of facilities evaluated in the risk assessment. Includes 35 operating facilities subject to 40 CFR part 63, subpart AAAAA.
[3] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[4] Maximum target organ-specific hazard index (TOSHI). The target organ with the highest TOSHI for the Lime Manufacturing source category is the respiratory system.
[5] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. The acute HQ shown was based upon the lowest acute 1-hour dose-response value, the recommended exposure limit (REL) for elemental mercury. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

The results of the chronic inhalation cancer risk assessment, based on actual emissions, show the estimated maximum individual cancer risk (MIR) posed by the 35 facilities is 1-in-1 million, with metals, aldehydes, and organic HAP emissions from the lime kiln and cooler exhaust as the major contributors to the risk. The total estimated cancer incidence based on actual emission levels is 0.001 excess cancer cases per year, or one excess case every 1,000 years. About 12 people are estimated to have cancer risks greater than or equal to 1-in-1 million based on actual emissions from HAP emitted from the 35 facilities in this source category. The maximum chronic noncancer hazard index (HI) for the source category is estimated to be less than 1 (0.04) based on actual emissions of hydrochloric acid (HCl), nickel compounds, and acrolein emitted from lime kiln and cooler exhaust. No one is estimated to have a TOSHI greater than 1 based on actual emissions.

The EPA also evaluated the cancer risk at the maximum emissions allowed by the MACT standard, or ''MACT-allowable emissions.'' Risk results from the inhalation risk assessment using the MACT-allowable emissions indicate that the cancer MIR is 2-in-1 million with metals, aldehydes, and organic HAP emissions from lime kiln and cooler exhaust driving the risks, and that the maximum chronic noncancer TOSHI value is 0.05 with HCl, nickel compounds, and acrolein emissions from lime kiln and cooler exhaust driving the TOSHI. The total cancer incidence estimated based on allowable emissions from this source category is 0.003 excess cancer cases per year or one excess case every 333 years. Based on MACT-allowable emission rates, approximately 450 people are estimated to have cancer risks above 1-in-1 million. No people are estimated to have a noncancer HI above 1 based on allowable emissions.

For the Lime Manufacturing source category, the maximum acute HQ is 0.6 based on the REL, driven by actual emissions of elemental mercury. By definition, the acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures.

We also conducted a multipathway screening assessment for the source category, and the results of the screening assessment are presented in the risk report titled *Residual Risk Assessment for the Lime Manufacturing Plants Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* and section IV of the proposal preamble (84 FR 48708, September 16, 2019) available in the docket for this action. A screening value is not an estimate of the cancer risk or a noncancer HQ (or HI). Rather, a screening value represents a high-end estimate of what the risk or HQ may be. For this source category the highest screening values were from mercury emissions, with a Tier 2 screening value of 5 and a Tier 3 screening value of 2 for this noncarcinogen. We are confident that if a refined multipathway risk assessment was conducted, the HQ for mercury would be lower than 2. Further details on the Tier 3 screening assessment can be found in Appendix 11 of *Residual Risk Assessment for the Lime Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule.* Dioxin and arsenic emissions resulted in a Tier 2 cancer screening value of 20, which means that we are confident that the multipathway cancer risk is lower than 20-in-1 million.

The EPA has determined that it is not necessary to go beyond the Tier 3 assessment for mercury (to a site-specific assessment) or beyond the Tier 2 cancer screening assessment. As explained above, the mercury screening value of 2 is a high-end estimate of what the risk or hazard may be and can be interpreted to mean that we are confident that the HQ would be lower than 2. Similarly, we are confident that the excess cancer risk is less than 20-in-1 million, and evaluation under Tier 3 or a site-specific assessment would further reduce the estimated risk. Further, risk results from four site-specific mercury assessments the EPA has conducted for four RTR source categories resulted in noncancer HQs that range from 50 times to 800 times lower than the respective Tier 2 mercury screening value for those facilities (refer to Docket ID No. EPA–HQ–OAR–2017–0015 for a copy of these reports).[2] Based on our review of these analyses, we expect if we were to perform a site-specific assessment for the Lime Manufacturing source category, the mercury HQ would be at least a one order of magnitude less than the Tier 2 non-cancer screening value for mercury. Thus, the EPA is confident that the mercury HQ would be less than 1, if further refined to incorporate enhanced site-specific analyses such as improved model boundary identification with improved soil/water run-off calculations and AERMOD deposition outputs used in the TRIM.FaTE model.

In evaluating the potential for multipathway effects from emissions of lead, the EPA compared modeled annual lead concentrations to the secondary National Ambient Air Quality Standards (NAAQS) level for lead (0.15 milligram per cubic meter (mg/m^3), arithmetic mean concentration over a 3-month period). The highest annual average lead concentration, 0.0007 mg/m^3, is far below the NAAQS level for lead, indicating a low potential for multipathway impacts.

The EPA also conducted an environmental risk screening assessment for the Lime Manufacturing source category for the following pollutants: Arsenic, cadmium, dioxins and furans (D/F), HCl, hydrogen fluoride (HF), lead, mercury (methyl mercury and mercuric chloride), and polycyclic organic matter (POM). In the Tier 1 screening analysis for HAP known to be persistent and bio-accumulative in the environment (PB–HAP) (other than lead, which was evaluated differently), arsenic, cadmium, and POM emissions had no exceedances of any of the ecological benchmarks evaluated. D/F emissions had a Tier 1 exceedance at 31 facilities for a surface soil benchmark by a maximum screening value of 30. Divalent mercury emissions had Tier 1 exceedances for the following benchmarks: Sediment threshold level (one facility), surface soil threshold level—plant communities (25 facilities), and surface soil threshold level—invertebrate communities (32 facilities) by a maximum screening value of 20. Methyl mercury emissions had Tier 1 exceedances for the following benchmarks: Fish (avian/piscivores) NOAEL—Merganser (one facility), surface soil no-observed-adverse-effect-level (NOAEL) for mammalian insectivores—shrew (13 facilities), and surface soil NOAEL for avian ground insectivores—woodcock (33 facilities) by a maximum screening value of 40. A Tier 2 screening analysis was performed for D/F, divalent mercury, and methyl mercury emissions. In the Tier 2 screening analysis, there were no exceedances of any of the ecological benchmarks evaluated for any of the pollutants. For lead, we did not estimate any exceedances of the secondary lead NAAQS. For HCl and HF, the average modeled concentration around each facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl and HF (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

An assessment of risk from facility-wide actual emissions was performed to provide context for the source category risks. The maximum lifetime individual cancer risk posed by the 35 facilities, based on facility-wide emissions, is 1-in-1 million (estimated for three facilities), with arsenic, chromium (VI) compounds, and nickel emissions from fugitive PSH operations driving the risk.

[2] EPA Docket records: Appendix 11 of the *Residual Risk Assessment for the Taconite Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule;* Appendix 11 of the *Residual Risk Assessment for the Integrated Iron and Steel Source Category in Support of the Risk and Technology Review 2019 Proposed Rule;* Appendix 11 of the *Residual Risk Assessment for the Portland Cement Manufacturing Source Category in Support of the 2018 Risk and Technology Review Final Rule;* and Appendix 11 of the *Residual Risk Assessment for the Coal and Oil-Fired EGU Source Category in Support of the 2018 Risk and Technology Review Proposed Rule.*

The total estimated cancer incidence from facility-wide emissions is 0.004 excess cancer cases per year, or one case in every 250 years. Approximately 30 people are estimated to have cancer risk equal to 1-in-1 million from facility-wide emissions. The maximum facility-wide chronic noncancer TOSHI is estimated to be less than 1 (0.4), mainly driven by emissions of HCl from a facility-wide fugitive area source.

To examine the potential for any environmental justice issues that might be associated with the source category, the EPA performed a demographic analysis, which is an assessment of risk to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. The results of the Lime Manufacturing source category demographic analysis indicated that emissions from the source category expose approximately 12 people to a cancer risk at or above 1-in-1 million and no people to a chronic noncancer TOSHI greater than 1. The percentages of the at-risk population indicated that three of the 10 demographic groups (White, African American and people below the poverty level) that are living within 50 km of facilities in the source category exceeded the corresponding national percentage for the same demographic groups. The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Lime Manufacturing Source Category Operations,* available in the docket for this action.

The EPA weighed all health risk factors in our risk acceptability determination, and we proposed that the residual risks from this source category are acceptable. We then considered whether the NESHAP provides an ample margin of safety to protect public health, and whether more stringent standards were necessary to prevent an adverse environmental effect, by taking into consideration costs, energy, safety, and other relevant factors. In determining whether the standards provide an ample margin of safety to protect public health, we examined the same risk factors that we investigated 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. We proposed that the 2004 Lime Manufacturing Plants NESHAP requirements provide an ample margin of safety to protect public health. Based on the results of our environmental risk screening assessment, we also proposed that more stringent standards are not necessary to prevent an adverse environmental effect.

2. How did the risk review change for the Lime Manufacturing source category?

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed.

3. What key comments did we receive on the risk review, and what are our responses?

Additional comments and our specific responses can be found in the comment summary and response document titled *Summary of Public Comments and Responses for Lime Manufacturing Plants Residual Risk and Technology Review,* which is available in the docket for this action. The EPA received comments in support of and opposed to the proposed risk review and our determination that no revisions were warranted under CAA section 112(f)(2). Key comments and responses are discussed below.

Comment: One commenter stated that there are substantial health threats from the lime manufacturing industry. The commenter stated that it is unlawful, arbitrary and capricious for the EPA to do nothing to reduce any of these emissions or resulting health threats from lime manufacturing. The commenter stated that the EPA may not lawfully or rationally find health risks to be ''acceptable'' under CAA section 112(f)(2) when the record shows the opposite, and the EPA has ignored significant health impacts. The commenter stated that the EPA's proposal is incomplete and based on analyses that underestimate and ignore the health risks from the toxic pollution that lime manufacturing facilities emit into communities.

Response: The EPA disagrees with the comment. Results of the EPA's risk assessment for the Lime Manufacturing source category indicate that both the actual and allowable inhalation cancer risks to the individual most exposed are less than or equal to 2-in-1 million, well below the presumptive limit of acceptability of 100-in-1 million. The actual and allowable inhalation noncancer risks to the individual most exposed are below a HQ of 1. Based on the conservative nature of the multipathway screens, we find the Tier 2 screening values (D/F and arsenic) for cancer and Tier 3 noncancer screening values (cadmium and mercury) acceptable for the Lime Manufacturing source category. This determination is based upon the upper-bound cancer screening values of 20 being significantly below an excess cancer risk of 100-in-1 million and on results from facility-specific assessments for mercury performed for other source categories. Based upon this experience, we conclude that if we were to conduct a site-specific risk assessment for the Lime Manufacturing source category, the risk would result in a HQ value of 1 or lower. For this reason and considering the conservative nature of the multipathway exposure screening scenario, no further analysis was performed. In our ample margin of safety analysis, we investigated available emissions control options that might reduce the risk from the source category. We considered this information along with all of the health risks and other health information considered in our determination of risk acceptability. As part of the proposed ample margin of safety analysis, we considered activated carbon injection (ACI) systems, which have not been used or demonstrated on lime kilns, for controlling D/F and mercury emissions. In both cases, considering the potential negligible reductions in emissions and the results of our risk analysis, we concluded that the use of ACI would have little effect on the source category risks. Due to the already low risk, along with the substantial costs associated with more stringent standards, we determined that additional emissions controls for this source category were not required to provide an ample margin of safety to protect public health. We have retained this determination in the final rule. We note that the commenter did not provide detail or supporting documentation for their comment.

Comment: A commenter urged the EPA to set stronger standards to bring further protection to communities from lime manufacturing facilities. The commenter requested that the EPA consider the people exposed to these facilities' emissions and affected by its proposed decision not to strengthen the emission limits. The commenter urged the EPA to exercise its legal authority to end unacceptable risk for exposed communities and set the ''ample margin of safety to protect public health'' and prevent an adverse environmental effect, instead of attempting to avoid the science and the health threats shown in the record.

Response: The risk assessment demonstrated that health risks due to air emissions from lime manufacturing sources are acceptable and after considering available control options

and all available risk information, the EPA concluded that the current standards provide an ample margin of safety to protect public health. These conclusions support the EPA's decision to not revise the existing emission limits. However, we have amended the final rule to make corrections to certain provisions and have amended provisions to clarify their intent and these revisions will result in improved monitoring and compliance with and implementation of the rule. In addition, the elimination of the SSM exemption may result in lower HAP emissions.

Comment: A commenter stated that the EPA underestimated the health threats to children and from early-life exposure by ignoring increased risk in childhood and from prenatal exposure.

Response: The EPA disagrees with the comment that the risk assessment for this source category does not consider the groups that may be most at-risk (*e.g.,* children). When the EPA derives exposure reference concentrations and unit risk estimates for metal HAP, it also considers the most sensitive populations identified in the available literature and, importantly, these are the values used in our risk assessments.

We acknowledge that population subgroups, including children, may have a potential for risk that is greater than the general population due to greater relative exposure and/or greater susceptibility to the toxicant. The assessments we undertake to estimate risk account for this potential vulnerability, for example; the EPA includes exposure from D/F through ingestion of breast-milk for infants less than 1 year of age. The EPA also estimates age-specific risks to account for the higher sensitivity of developing children to mutagens. With respect to inhalation exposure, the risk assessments we perform implicitly account for this greater potential for exposure by assuming lifetime exposure, in which populations are conservatively presumed to be exposed to airborne concentrations at their residence continuously, 24 hours per day for a full lifetime, including childhood. With regard to children's potentially greater susceptibility to noncancer toxicants, the assessments rely on the EPA's (or comparable) hazard identification and dose-response values that have been developed to be protective for all subgroups of the general population, including children.

For example, a review of the chronic reference value process concluded that the EPA's reference concentration (RfC) derivation processes adequately considered potential susceptibility of different subgroups with specific consideration of children, such that the resultant RfC values pertain to the full human population, ''including sensitive subgroups,'' a phrase which is inclusive of childhood.[3] With respect to cancer, the EPA uses the age-dependent adjustment factor approach referred to by the commenter but limits the use of those factors only to carcinogenic pollutants that are known to act via mutagenic mode of action (MOA), in contrast to the California Office of Environmental Health Hazard Assessment approach, which uses them across the board for all carcinogens regardless of MOA. In lieu of chemical-specific data on which age or life-stage specific risk estimates or potencies can be determined, default age dependent adjustment factors can be applied when assessing cancer risk for early-life exposures to chemicals that cause cancer through a mutagenic MOA. With regard to other carcinogenic pollutants for which early-life susceptibility data are lacking, it is the EPA's long-standing science policy position that use of the linear low-dose extrapolation approach (without further adjustment) provides adequate public health conservatism in the absence of chemical-specific data indicating differential early-life susceptibility or when the mode of action is not mutagenicity. The basis for this methodology is provided in the 2005 Supplemental Guidance.[4]

The estimated risks must be considered in the context of the full set of assumptions used for this risk assessment. Our unit risk estimates for HAP are considered a plausible upper-bound estimate with an appropriate age dependent adjustment; actual potency is likely to be lower and could be as low as zero. Our chronic noncancer reference values have been derived considering the potential susceptibility of different subgroups, with specific consideration of children.

Comment: One commenter stated that the EPA underestimated health threats to communities exposed to multiple sources by neglecting to add factors to account for the increased risks caused by such exposure. The commenter stated that the EPA underestimated the cancer, chronic noncancer, and acute health risks by using modeling assumptions that ignore real-world exposures, underestimating risk from chemicals such as benzene and lead due to the EPA's refusal to follow the best available science, and neglecting to aggregate cumulative risks.

Response: The EPA's chronic risk assessment modeling accounts for cumulative cancer risks from emitted carcinogens and for pollutants that have similar modes of action or (where this information is absent) that affect the same target organ, we aggregated the HQs. This process creates, for each target organ, a TOSHI, defined as the sum of HQs for individual HAP that affect the same organ or organ system.

The modeling conducted also includes the effects of multiple facilities that may be in close proximity when estimating concentration and risk impacts at each block centroid. When evaluating the risks associated with a particular source category, we combined the impacts of all facilities within the same source category and assessed chronic exposure and risk for all census blocks with at least one resident (*i.e.,* locations where people may reasonably be assumed to reside rather than receptor points at the fenceline of a facility). The MIR considers the combined impacts of all sources in the category that may be in close proximity. This approach is similar for those facilities within the source category that have an associated or cumulative impact on neighboring lakes as it relates to assessing multi-pathway impacts for each of the PB–HAP. Background risks or contributions to risk from sources outside the source category under review could be one of the relevant factors considered in the ample margin of safety determination, along with cost and economic factors, technological feasibility, and other factors. Background risks and contributions to risk from sources outside the facilities under review were not considered in the ample margin of safety determination for this source category, mainly because of the significant uncertainties associated with emissions estimates for such sources. Our approach here is consistent with the approach we took regarding this issue in the Hazardous Organic NESHAP (HON) RTR (71 FR 76603, December 21, 2006), which the Court upheld in the face of claims that the EPA had not adequately considered background (*NRDC* v. *EPA,* 529 F.3d 1077 (D.C. Cir. 2008)).

Comment: A commenter stated that the EPA has ignored all multipathway cancer and noncancer chronic health risks that result when persistent or bioaccumulative pollutants emitted by lime manufacturing facilities fall into the Great Lakes, bays, rivers, and other large waterbodies. The commenter

[3] USEPA, 1994. Methods for derivation of inhalation reference concentrations and application of inhalation dosimetry. EPA/600/8–90/066F; *https://www.epa.gov/sites/production/files/2014-11/documents/rfc_methodology.pdf.*

[4] USEPA, 2005b. Supplemental guidance for assessing early-life exposure to carcinogens. EPA/630/R–03003F. *https://www3.epa.gov/ttn/atw/childrens_supplement_final.pdf.*

stated that by excluding all impacts from deposition in these waterbodies, the EPA ignored both health threats and ecological threats, and violated its legal obligation to assess health and environmental risk and reduce these hazards as the statute directs.

Response: Very large lakes and bays (*i.e.,* those larger than 100,000 acres) are not considered because their large volumes significantly dilute air deposition from point sources. Such large lakes, including the Great Lakes, the Great Salt Lake, Lake Okeechobee, Lake Pontchartrain, Lake Champlain, Green Bay, and Galveston Bay also dilute contaminants in the vast biomass of fish in the large aquatic food webs. Contaminants derived from emissions to air by a point source would be distributed among populations of millions of fish resulting in negligible increases in fish tissue concentrations attributable to the point source. Also, very large lakes are rare (only 35 such lakes exist in the conterminous United States). Moreover, for facilities near large lakes, there usually are other, smaller lakes that the EPA does consider for which contaminant dilution would be lower, and, therefore, for which human health and ecological risks would be higher. Thus, the EPA does model exposure via fish consumption for populations that are near large lakes in a manner that generally will be more health protective than modeling the very large lake. The EPA also does not model lakes adjacent or connected to a river or saltwater body (estuaries and rivers) or bays; these waterbodies are likely to have high outflow with limited chemical retention. Less retention time for these types of waterbodies result in significantly lower media concentrations when compared to lakes.

4. What is the rationale for our final approach and final decisions for the risk review?

The EPA evaluated all of the comments on the EPA's risk review and determined that no changes to the review are needed. In the proposed rule, we proposed that the risks from the Lime Manufacturing source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. For the reasons explained in the proposal and in our responses to public comments and pursuant to CAA section 112(f)(2), we are finalizing our risk review as proposed.

B. Technology Review for the Lime Manufacturing Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Lime Manufacturing source category?

Pursuant to CAA section 112(d)(6), the EPA conducted a technology review, which focused on identifying and evaluating developments in practices, processes, and control technologies that would necessitate revision to the existing emission standards for the Lime Manufacturing source category. No cost-effective developments in practices, processes, or control technologies were identified in our technology review to necessitate revisions to the PM or opacity standards, which are both used as a surrogate for HAP metals, standards. More information concerning our technology review is in the memorandum titled *Technology Review for the Lime Manufacturing Source Category,* which is in the docket for this action, and in the preamble to the proposed rule (84 FR 48726).

2. How did the technology review change for the Lime Manufacturing source category?

The technology review has not changed since proposal.

3. What key comments did we receive on the technology review, and what are our responses?

The EPA received comments in support of the proposed determination from the technology review that no revisions were necessary under CAA section 112(d)(6). We also received comments asserting that the technology review was inadequate for a variety of reasons, primarily because of failure to consider control technologies for unregulated HAP emissions.

Comment: A commenter stated the EPA does not discuss or perform any review under CAA section 112(d)(6) for all emitted HAP. The commenter noted that the EPA failed to complete a technology review for HCl, mercury, D/F, and organic HAP. The commenter stated that the EPA cannot determine whether developments in pollution control make it ''necessary'' to revise the emission standards without determining what developments have occurred for these HAP. The commenter stated that the fact that these HAP are emitted from the source category requires the EPA to evaluate them pursuant the technology review.

Response: Section 112(d)(6) of the CAA requires the EPA to ''review and revise, as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section . . . .'' The EPA reads CAA section 112(d)(6) as a limited provision requiring the Agency to review the original emission standards already promulgated and to revise those standards as necessary, taking into account developments in practices, processes, and control technologies. Under this reading, section 112(d)(6) of the CAA does not impose upon the Agency any obligation to promulgate new emission standards or expand the scope of an existing regulation.[5] Accordingly, we disagree with the commenter that CAA section 112(d)(6) requires a technology review for HCl, mercury, D/F, and organic HAP. The EPA notes that we have completed our statutory requirements under CAA section 112(d)(6) in reference to the promulgated standards.

Any new MACT standards would not be established pursuant to CAA section 112(d)(6), but instead would be established under CAA sections 112(d)(2) and (3) or CAA section 112(h). Establishing emissions standards under CAA sections 112(d)(2) and (3) or 112(h) involves a different analytical approach than reviewing emissions standards under CAA section 112(d)(6).

Comment: One commenter stated that there are multiple HAP emitted from the Lime Manufacturing source category that have no numeric emission standards, including HCl, organic HAP (*e.g.,* formaldehyde, styrene), mercury, and D/F. The commenter stated that CAA section 112(d) requires limits for each HAP that a source category emits and that CAA section 112(d)(6) requires the EPA to review and revise its existing emission standards ''as necessary.'' The commenter stated that when the EPA reviewed the Lime Manufacturing source category and found that they lack emission limits for emitted HAP, it is necessary under CAA section 112(d)(6) to revise the standard (*i.e.,* set limits for these HAP). The commenter noted that the EPA's failure to set emission limits for these HAP causes public suffering from uncontrolled exposure to these HAP.

The commenter cited prior court rulings that found that the Agency has a ''clear statutory obligation to set emission standards for each listed HAP.'' [*National Lime Ass'n,* 233 F.3d

[5] On April 21, 2020, as the Agency was preparing the final rule for signature, a decision was issued in *LEAN* v. *EPA,* 955 F. 3d. 1088 (D.C. Cir. 2020) in which the Court held that the EPA has an obligation to set standards for unregulated pollutants as part of technology reviews under CAA section 112(d)(6). At the time of signature, the mandate in that case had not been issued and the EPA is continuing to evaluate the decision.

625, 634 (D.C. Cir. 2000) and *Sierra Club* v. *EPA,* 479 F.3d 875, 883 (D.C. Cir. 2007)] The commenter cited prior rulemakings where the EPA has acknowledged this issue and has subsequently set emission limits for pollutants without standards.

The commenter noted that the Lime Manufacturing Plants RTR clearly demonstrates that these pollutants are emitted from the source category, but that the EPA has not acknowledged its obligation to set limits on these uncontrolled HAP and has not explained why it is not ''necessary'' to revise the existing standards to set limits for these HAP. The commenter stated that the EPA has emissions data from at least some sources, and it must complete its obligation to set a limit for these HAP.

The commenter stated that it is unlawful and arbitrary for the EPA not to set limits for these HAP in this rulemaking. The commenter stated that if the EPA does not do this, it will fail to complete the review and revision rulemaking as CAA section 112(d)(6) requires, will violate the Court's order in *California Communities Against Toxics* v. *Pruitt,* 241 F. Supp. 3d 199 (D.C. 2017), and will also issue a final rule that is unlawful and inadequate.

Response: CAA section 112(d)(6) requires the EPA to review and revise, as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section. We do not read section CAA section 112(d)(6) as supporting the commenter's assertion that the EPA must establish new standards for unregulated emission points or pollutants as part of a technology review of the existing standards (but see footnote 5). The EPA reads CAA section 112(d)(6) as a limited provision requiring the Agency to, at least every 8 years, review the emission standards already promulgated in the NESHAP and to revise those standards as necessary taking into account developments in practices, processes, and control technologies. The EPA does not read CAA section 112(d)(6) as directing the Agency, as part of or in conjunction with the mandatory 8-year technology review, to develop new emission standards to address HAP or emission points for which standards were not previously promulgated.

When the EPA established standards for previously unregulated emissions, we did not establish those initial standards pursuant to CAA section 112(d)(6) but instead established the standards under one of the provisions that govern initial standard setting—CAA sections 112(d)(2) and (3) or, if the prerequisites are met, CAA sections 112(d)(4) or 112(h). Establishing emissions standards under these provisions of the CAA involves a different analytical approach from reviewing emissions standards under CAA section 112(d)(6).

Additional comments and our specific responses can be found in the comment summary and response document titled *Summary of Public Comments and Responses for Lime Manufacturing Plants Residual Risk and Technology Review,* which is available in the docket for this action.

4. What is the rationale for our final approach for the technology review?

The EPA evaluated all of the comments on the EPA's technology review and determined that no changes to the review are needed. For the reasons explained in the proposed rule, we determined that no cost-effective developments in practices, processes, or control technologies were identified in our technology review to necessitate revisions to the standards. More information concerning our technology review can be found in the memorandum titled *Technology Review for the Lime Manufacturing Source* Category, which is in the docket for this action. Therefore, pursuant to CAA section 112(d)(6), we are finalizing our technology review as proposed.

C. SSM for the Lime Manufacturing Source Category

1. What did we propose for the Lime Manufacturing source category?

The EPA proposed amendments to the Lime Manufacturing Plants NESHAP to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times or that are unnecessary or redundant in the absence of an SSM exemption. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (84 FR 48708, September 16, 2019).

2. How did the SSM provisions change from proposal for the Lime Manufacturing source category?

The EPA is finalizing the SSM provisions with the following changes from the proposal:

- Replacing the proposed startup work practice standards for kilns and coolers equipped with a FF or ESP with opacity emission standards.
- Replacing the proposed startup work practice standards for kilns and coolers equipped with a wet scrubber with a requirement to meet standards applicable during normal operation.
- Revising the definition of ''Startup'' to add ''on-specification'' prior to ''lime product'' and to add an alternate ending to startup.
- Adding testing requirements for determining when lime product is deemed on-specification.

With respect to the revisions to the proposed startup standards, the EPA is finalizing standards for startup that differ from what we proposed based on a re-evaluation of the need for work practice standards. The EPA proposed work practice standards for kilns equipped with wet scrubbers, FFs, and ESPs. However, the final rule requires kilns and coolers that are equipped with ESPs or FFs to meet numerical opacity limits and kilns and coolers equipped with wet scrubbers to meet the scrubbing liquid flow rate requirements that apply during normal operations. The EPA's determination in the proposed rule (84 FR 48727) that work practice standards were appropriate was based on a finding that the application of measurement methodology for PM emissions was impracticable because the test methods required for compliance are to be conducted under steady-state conditions which are difficult to achieve during startup. In addition to the reference test method (EPA Method 5), we considered PM emission monitors, which also requires steady-state conditions. However, based on comments claiming that the EPA has not shown a lack of practicable measurement methodology for startup periods, we reconsidered the issue. The 2004 final NESHAP rule established opacity as an emission standard limiting PM emissions. We are not aware of factors that would prevent the monitoring of opacity during startup periods.

For kilns equipped with FFs or ESPs, 40 CFR part 63, subpart AAAAA allows compliance with opacity standards to ensure PM is controlled between stack tests.[6] In this rule, for periods of startup, the EPA is requiring kilns equipped with FFs or ESPs to meet the 15-percent opacity limit that applies during normal operation averaged over the period of startup. The EPA has determined that a longer averaging time is appropriate for startup periods since we are aware that emissions during startup can be variable in light of the sequence of events that

[6] The EPA notes that under 40 CFR part 63, subpart AAAAA stack testing is not permitted during startup and shutdown. As proposed, this rule replaces the reference in Table 9 to 40 CFR 63.7(e)(1) (which prohibits performance testing during periods of startup and shutdown) with identical language at 40 CFR 63.7112(c)).

occur during startup of a kiln. Thus, the longer averaging time being finalized is to account for this variability that could result in spikes in opacity during the startup period. During startup, even the best performing units are constantly making adjustments in terms of fuel flow and combustion air flow rate. Every increase in fuel rate or feed rate requires the source to adjust air flow to the proper level. Each adjustment can lead to a spike in opacity. Accounting for such variability in setting emission standards is consistent with the CAA case law. *See, United States Sugar Corp.* v. *EPA,* 830 F.3d 579, 632 (D.C. Cir. 2016) (''We have held, see *Mossville Envtl. Action Now* v. *EPA,* 370 F.3d 1232, 1242 (D.C. Cir. 2004), and recently reaffirmed, see *NACWA,* 734 F.3d at 1133–34, that the EPA can consider this variability when setting MACT floors.''). As proposed, the EPA is not establishing different shutdown standards for kilns equipped wth FFs or wet scrubbers and, thus, such kilns must meet otherwise applicable limits during shutdown.

3. What key comments did we receive on the SSM provisions, and what are our responses?

The EPA received 16 comments related to our proposed revisions to the SSM provisions. Commenters generally supported the proposed removal of the SSM exemptions but disagreed with either the proposing of work practice standards for the startup period or certain aspects of the proposed work practice standards. We evaluated the comments and determined that changes to the proposed SSM provisions are warranted. A summary of these comments and our responses are located in the memorandum titled *Summary of Public Comments and Responses for Lime Manufacturing Plants Residual Risk and Technology Review,* which is in the docket for this action.

Comment: Commenters stated that the EPA's work practice standard requiring all kilns to start and operate on ''clean fuels'' until the kiln reaches a temperature of 1200 degrees Fahrenheit is unnecessary, not based on information in the administrative record, inconsistent with processes required to safely and properly commence kiln operation, and, for some kilns, is impractical based on the realities of operating kilns in the lime industry.

The commenters stated that for operational and safety reasons, electrostatic precipitators (ESP) cannot be started immediately to effectively remove PM upon startup of the kiln. Therefore, the clean fuel work practice for startup makes sense for ESP-equipped kilns. The commenters confirmed that the limited number of ESP-equipped kilns in the lime industry can be started on natural gas or other listed clean fuels.

The commenters stated that for baghouse and scrubber-equipped kilns, clean fuel startup is not needed because the air pollution control device is operating at the beginning of startup and begins removing PM immediately. The commenters stated that since stone feed rates are low during startup, total PM emissions exiting the kiln will be less than during normal operation, and the operating air pollution control devices will ensure that PM will be removed. The commenters also noted that clean fuels are not available at all lime manufacturing locations (for example, natural gas is not readily available in areas far from gas pipelines).

The commenters stated that the proposed requirement to meet the opacity and scrubber liquid flow rate operating limits is sufficient to show that emissions are not excessive for baghouse and scrubber-equipped kilns. The commenters recommended that the EPA delete the requirement for baghouse and scrubber-equipped kilns to start on clean fuels but add a requirement that the air pollution control devices for such kilns be in operation at the beginning of startup.

Response: The EPA agrees that the requirement to start and operate on ''clean fuels'' is unnecessary for kilns equipped with FFs or wet scrubbers because the control devices can be operational at the time of startup. Therefore, we are not finalizing the work practice requirement to startup on clean fuel for kilns equipped for FFs or wet scrubbers. As explained above in section C.2, we are instead requiring kilns equipped with FFs, ESPs or wet scrubbers to comply with standards as described in section C.2 above and in Table 2 during startup and shutdown.

Comment: The proposed definition of the end of startup was ''Startup ends 60 minutes after the lime kiln generates lime product.'' Commenters stated that the term ''lime product'' is not specific enough to provide certainty to regulated sources. The commenters highlighted that a kiln will start to discharge off-spec product almost simultaneously with the lighting of the primary fuel. The commenters stated that it can take up to 12 hours to produce quality grade lime following first discharge from a rotary kiln, and even longer for a vertical kiln.

The commenters recommended that the end of startup should be related to levels of stone feed, because the applicable PM emissions limits are based on tons of stone feed. The commenters recommended that the definition of the end of startup should be revised to read ''Startup ends 60 minutes after stone feed reaches planned production quantities.''

Response: The EPA appreciates the commenters feedback regarding the definition of the end of startup. Commenters provided further information (Docket ID Item No. EPA–HQ–OAR–2017–0015–0015, *SSM Letter from Industry (1/31/2019))* regarding what constitutes on-specification lime product and the time when on-specification lime product is produced. Commenters note that on-specification lime is produced when steady-state conditions are achieved. The EPA determined that the definition of the end of startup is the time when steady-state conditions are achieved such that PM testing could be conducted with the reference test method. We have determined that these steady-state conditions are achieved either when first producing on-specification lime product or 12 hours following first discharge from the kiln, whichever is earlier.

We are finalizing the definition of the end of startup to provide more clarity, as follows: ''*Startup ends when the lime kiln generates on-specification lime product or 12 hours following first discharge from the lime kiln, whichever is earlier.*'' We are also finalizing a new definition for on-specification lime product, as follows: ''*On-specification lime product means lime product that has been sufficiently calcined to meet end use requirements.*''

Finally, we are finalizing a requirement for facilities to test hourly during startup to determine when lime product meets the definition of on-specification, to maintain records of the time the kiln first began producing on-specification lime product, and the time of first discharge from the lime kiln.

Comment: Commenters stated that the best way to address malfunction events would be for plants to develop site-specific protocols for malfunctions that would be embodied in a rule required plan, and that compliance with those protocols would constitute compliance with an applicable work practice standard. The commenters suggested retaining the requirement for a SSM plan that would contain these protocols, or requiring them in the plant's operations, maintenance, and monitoring (OM&M) plan.

The commenters stated that this would allow work practices for malfunctions to be tailored to the specific equipment and operating conditions present at each plant, and

the presence of the protocols in a required plan would allow for the EPA review and enforcement. The commenters stated that the EPA's consideration of work practice standards for specified malfunctions (84 FR 48728) would be better than not setting separate standards at all, but that this approach would omit some malfunctions, and will not have the same degree of ''fit'' as tailored OM&M protocols would have.

The commenters stated that adopting work practice standards for specified malfunctions (as opposed to tailored OM&M protocols) could also cause confusion as to what malfunctions are covered by the regulation. The commenters summarized the definition of malfunction in 40 CFR 63.2. The commenters noted that not all operational malfunctions of kilns and their associated air pollution control and monitoring equipment constitute ''malfunctions'' under the definition in section 63.2, because some problems do not have the potential to cause emissions limitations to be exceeded.

The commenters stated that local engineering expertise may be required to determine whether particular operational malfunctions are ''malfunctions'' under the statute and rule and that this is a reason why tailored procedures in OM&M plans would be preferable to work practice standards for specified malfunctions.

Response: The EPA does not agree with the commenter that malfunctions should be addressed through source-specific enforceable ''plans'' that would contain these protocols for malfunctions. Establishing source-specific protocols for malfunctions that met MACT stringency requirements would be difficult, if not impossible, given the myriad different types of malfunctions that can occur. *See, U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 608 (2016)(''Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.'')

The EPA is also not finalizing specific work practice standards for specific malfunction events, although we may do so if available information supports separate MACT-compliant standards in the future. In this case, we received comment and information on potential work practice standards during periods of malfunction, however we do not have information to support that the suggested standards met the MACT stringency requirements. The EPA also agrees that finalizing specific work practice standards for malfunctions has the potential to omit certain malfunction events and cause confusion regarding what malfunctions are covered by the regulation, as it would be difficult to capture all malfunction events.

Comment: A commenter stated support for the EPA's proposed removal of the existing exemption of emissions during SSM periods. The commenter stated that the CAA requires that standards are continuous and applicable at all times and referenced various court rulings upholding this determination.

The commenter stated that the EPA may not finalize the new SSM exemptions it has proposed. The commenter stated that the EPA has not cited and can cite no statutory language granting it authority or ''discretion'' to set such standards, because it has none. The commenter stated that the EPA has only the discretion provided by the Act and delegated by Congress. [*Clean Air Council* v. *Pruitt,* 862 F.3d 1, 9 (DC Cir. 2017)] The commenter stated that relevant statutory language denies, rather than gives, the EPA authority to set malfunction-based standards or exemptions. See 42 U.S.C. 7412(d), (h), and 7602(k).

Response: The EPA disagrees that it has proposed new SSM exemptions or that the EPA does not have authority to establish different standards for periods of startup, shutdown or malfunction. In fact, the EPA proposed to (1) eliminate the SSM exemption, (2) require compliance with the existing standard for periods of malfunction and (3) require compliance with standards during periods of startup and shutdown. The commenter does not explain and cannot support the general claim that the statutory language denies the EPA authority to set different standards for startup or shutdown. The 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008) (''2008 Sierra Club decision''), held that emissions standards or limitations must be continuous in nature and that ''some'' section 112 standards apply continuously. The DC Circuit reiterated this principle in *Sierra Club* v *EPA,* 884 F. 3d. 1185, 1203 (DC Cir. 2018) (''2018 Sierra Club decision'') explaining that the 2014 Sierra Club decision ''held that, whenever HAP sources are in operation, including during startup and shutdown, the EPA must continuously subject them to either numeric limits or Section 112(h)-compliant work practice standards.'' Consistent with the 2008 Sierra Club decision, and taking into account startup and shutdown periods, the EPA proposed work practice standards for these periods based on a determination under CAA section 112(h) that for kilns and coolers it was not feasible to prescribe or enforce a numeric standard during these periods of startup and shutdown. See 84 FR 48727. As discussed in the preamble to the final rule, based on public comments, we have made changes from the proposal to the standards for periods of startup and shutdown.

Comment: One commenter stated that the EPA does not have statutory authority to create work practice requirements for startups. The commenter summarized the requirements and applicable definitions of CAA sections 7412(h)(1) and (h)(2) and stated that the EPA has not satisfied either of the statute's definitions of ''not feasible to prescribe or enforce and emission standard.'' The commenter stated that promulgating work practice requirements instead of numeric emission limitations for periods of startup would violate the statute. The commenter stated that CAA section 112(h)(2)(B) covers situations where ''the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.'' The commenter stated that startup and shutdown are ''events,'' not a ''particular class of source.'' The commenter stated that section 112(h)(2)(B) cannot be used as justification for work practice standards in lieu of numeric emission limits.

Response: As discussed above, based on public comments, we have made changes from the proposal to the standards for periods of startup and shutdown. The EPA's final rule does not establish work practice standards for period of startup and shutdown, so the comment is no longer relevant. However, the EPA notes that it does not agree with the commenter that section 112(h)(2)(B) can be invoked to justify a work practice standard only for categories or subcategories of sources under section 112(h)(2)(B), not for periods of operation. Section 112(h) provides that the EPA may ''promulgate a design, equipment, work practice, or operational standard, or combination thereof'' in lieu of a numeric emission standard if the Administrator determines that it is not feasible, in his/her judgment, to prescribe or enforce a numeric standard. More specifically, section 112(h)(2) states it is infeasible to prescribe or enforce an emission standard if the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. Nothing in this section limits the Agency's discretion to establish work practice standards to particular sources, subcategories of sources, or source categories, or to certain periods of operations if, in the

Administrator's judgment, it is not feasible to prescribe or enforce a numeric emission standard during those periods. The reference to ''a particular class of sources'' in section 112(h)(2) does not limit the EPA's authority to determine, for a category or subcategory of sources, that it is infeasible to prescribe or enforce an emission standard for those sources during certain identifiable time periods, such as startup and shutdown.

Comment: A commenter stated that the EPA has proposed to excuse sources from using their ESPs during startup. The commenter stated that the EPA argues that industry stakeholders have claimed it may be unsafe to run ESPs during these times. The commenter stated that CAA section 112(h)(2)(B) does not authorize the EPA to set work practice requirements based on the Agency's views about the safety implications of running a particular control device.

The commenter stated that nothing in the CAA or existing rule requires lime kilns to control their PM emissions with ESPs. The commenter stated that if lime kiln owners and operators believe it is unsafe to run ESPs during startup and shutdown, the appropriate solution is for them to deploy other control devices (*e.g.,* FFs), not to excuse them from meeting numeric emission limits during these events.

Response: As discussed above, based on public comments, we have made changes from the proposal to the standards for periods of startup and shutdown. The EPA's final rule does not establish work practice standards for period of startup and shutdown so the comment is no longer relevant.

4. What is the rationale for our final approach for the SSM provisions?

We evaluated all comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule, we determined that it is appropriate to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times or that are unnecessary or redundant in the absence of an SSM exemption. Therefore, we are finalizing our approach for the SSM provisions as proposed with changes as detailed in section IV.C.2 of this preamble. More information concerning the amendments we are finalizing for SSM is discussed above and in the preamble to the proposed rule (84 FR 48727–48730, September 16, 2019).

D. Electronic Reporting Requirements for the Lime Manufacturing Source Category

1. What did we proposed for the Lime Manufacturing source category?

The EPA proposed that owners or operators of lime manufacturing plants submit electronic copies of required performance test reports, performance evaluation reports, and semiannual compliance reports through the EPA's CDX using the CEDRI. More information concerning our proposal on electronic reporting requirements can be found in the proposed rule (84 FR 48708).

2. How did the electronic reporting provisions change for the Lime Manufacturing source category?

Since proposal, the electronic reporting provisions have not changed.

3. What key comments did we receive on the electronic reporting provisions, and what are our responses?

The EPA received comments related to the proposed electronic reporting provisions. The commenters generally supported the proposed provisions but disagreed with certain aspects of the provisions.

Comment: Commenters provided feedback on the electronic semiannual compliance report (spreadsheet template), per the EPA's request (84 FR 48730). The commenters noted the following:

- In tab ''CMS Deviation Summary,'' column D (Total Source Operating Time (hours)), and column F (Total Duration of CMS Downtime as a percentage of Total Emissions Unit Operating Time) are both protected so it is not possible for an operator to input this data. This should be corrected.
- The example source operating time is shown as 6,240 hours. For semi-annual reporting, the maximum possible hours are 4,380.

The commenters stated that the EPA should compare the final template reporting form to the final rule to ensure each reporting element is required in the rule and that the template reporting form instructions are accurate and detailed enough to ensure consistent reporting across the industry.

Response: The EPA will check the final reporting template to be sure each reporting requirement marked as a required element is required by the final rule and will also provide adequate instructions for filling out the reporting template. The EPA will also check to be sure columns D (operating time) and F are unprotected in order that manual inputs can be entered by the user. The example operating time for semi-annual reporting will be updated to 4,380 hours.

Comment: One commenter stated that the EPA may not create an unlawful exemption or extension for compliance reporting as it proposes to do for web outages or so-called ''*force majeure* events,'' as this violates the requirement for standards to be continuous and would allow unreported exceedances to go unchecked, indefinitely.

Response: The commenter asserts that the brief case-by-case extension of report submittal deadlines is an unlawful exemption from compliance with the emissions standards. This is not the case. The EPA notes that there is no exemption to reporting, much less an exemption from compliance with the emission standards, only a method for requesting an extension of the reporting deadline. Reporters are required to justify their request and identify a reporting date. While no new fixed duration deadline is set, the regulation does require that the report be submitted electronically as soon as possible after the CEDRI outage is resolved or after the *force majeure* event occurs. The Administrator may even request that the report be sent in hardcopy until electronic reporting can be resumed.

The Administrator has full discretion to accept or reject the claim of a CEDRI system outage or *force majeure.* As such, an extension is not automatic and is agreed to on an individual basis by the Administrator. If the Administrator determines that a facility has not acted in good faith to reasonably report in a timely manner, the Administrator can reject the claim and find that the failure to report timely is a deviation from the regulation.

The EPA also disagrees that the ability to request a reporting extension violates the requirement for emissions standards to be continuous. While reporting is an important mechanism for the EPA and air agencies to assess whether owners or operators are in compliance with emissions standards, reporting obligations are separate from (*i.e.,* in addition to) requirements that an owner or operator be in compliance with an emissions standard. The EPA has discretion to establish reporting schedules, and also discretion to allow a mechanism for extension of those schedules on a case-by-case basis.

Additional comments and our specific responses can be found in the comment summary and response document titled *Summary of Public Comments and Responses for Lime Manufacturing Plants Residual Risk and Technology Review,* which is available in the docket for this action.

4. What is the rational for our final approach for the electronic reporting provisions?

The EPA evaluated all of the comments on the EPA's proposed amendments to the electronic reporting provisions. For the reasons explained in the proposed rule (84 FR 48708), we have determined the electronic submittal of the reports addressed in this final rulemaking will:

- Increase the usefulness of the data contained in those reports;
- be consistent with current trends in data availability and transparency;
- further assist in the protection of public health and the environment;
- improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements;
- facilitate the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance; and
- ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA.

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 the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [7] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy [8] developed in response to the White House's Digital Government Strategy.[9] For more information on the benefits of electronic reporting, see the memorandum titled *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in Docket ID No. EPA–HQ–OAR–2017–0015.

E. IBR

In accordance with the requirements of 1 CFR 51.5, the EPA will incorporate by reference the following documents described in the amendments to 40 CFR 63.14:

- ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for table 5 to subpart AAAAA. This method is approved as an alternative to EPA Method 3B of appendix A to part 60.
- ASTM D6348–03 (Reapproved 2010), Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, including Annexes A1 through A8, Approved October 1, 2010, IBR approved for 40 CFR 63.7142(a) and 63.7142(b). This method is approved as an alternative to EPA Method 320 of appendix A to part 63.
- ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for 40 CFR 63.7142(a) and 40 CFR 63.7142(b). This method is approved as an alternative to EPA Method 320 of appendix A to part 63.
- ASTM D6735–01 (Reapproved 2009), Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method, IBR approved for 40 CFR 63.7142(a). This method is approved as an alternative to EPA Method 321 of appendix A to part 63.
- ASTM D6420–99 (Reapproved 2010), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, Approved October 1, 2010, IBR approved for 40 CFR 63.7142(b). This method is approved as an alternative to EPA Method 18 of appendix A to part 60.
- EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997, IBR approved for 40 CFR 63.7113(d). This method was added in accordance with final revisions to the bag leak detection requirements under 40 CFR 63.7113(d).

The ANSI/ASME document is available from the American Society of Mechanical Engineers (ASME) at *http://www.asme.org;* by mail at Two Park Avenue, New York, NY 10016–5990; or by telephone at (800) 843–2763. The ASTM documents are available from the American Society for Testing and Materials (ASTM) at *https://www.astm.org;* by mail at l00 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; or by telephone at (610) 832–9500. The EPA has made, and will continue to make, the EPA document generally available electronically through *https://www.regulations.gov/* and at the EPA Docket Center (see the **ADDRESSES** section of this preamble for more information).

F. Technical and Editorial Changes for the Lime Manufacturing Source Category

1. What did we propose for the Lime Manufacturing source category?

The EPA proposed the following technical and editorial changes:

- Revising the monitoring requirements in 40 CFR 63.7113 to the provision that triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to EPA–454/R–98–015. *Fabric Filter Bag Leak Detection Guidance;*
- revising 40 CFR 63.7142 to add an alternative test method to EPA Method 320;
- revising 40 CFR.7142 to add the latest version of ASTM Method D6735–01;
- revising 40 CFR.7142 to add the latest version of ASTM Method D6420–99; and
- revising Table 4 to 40 CFR part 63, subpart AAAAA, to add alternative compliance option.

2. How did the technical and editorial changes change for the Lime Manufacturing source category?

Since proposal, the technical and editorial changes have not changed.

3. What key comments did we received on the technical and editorial changes, and what are our responses?

No comments were received on the technical and editorial changes detailed above.

4. What is the rationale for our final approach for the technical and editorial changes?

Because no comments were received on the technical and editorial changes that the EPA proposed, we determined that these changes should be finalized as proposed.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

There are currently 35 lime manufacturing facilities operating in the United States that are subject to the Lime Manufacturing Plants NESHAP. The 40 CFR part 63, subpart AAAAA,

[7] The EPA's *Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.regulations.gov/documentD=EPA-HQ-OA-2011-0156-0154.*

[8] E-Reporting Policy Statement for EPA Regulations, September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[9] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digitalgovernment.html.*

affected source is the lime kiln and its associated cooler, and the PSH operation system located at a major source of HAP emissions. A new or reconstructed affected source is a source that commenced construction after December 20, 2002, or meets the definition of reconstruction and commenced reconstruction after December 20, 2002.

B. What are the air quality impacts?

At the current level of control, emissions of total HAP are estimated to be approximately 2,320 tpy. This represents a reduction in HAP emissions of about 240 tpy due to the current (2004) Lime Manufacturing Plants NESHAP. The final amendments will require all affected sources subject to the emission standards in the Lime Manufacturing Plants NESHAP to operate without the SSM exemption. We were unable to quantify the specific emissions reduction associated with eliminating the SSM exemption. However, eliminating the SSM exemption will reduce emissions by requiring facilities to meet emissions standards during SSM periods.

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*i.e.,* 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 that would be required under this proposed rule. The EPA expects no secondary air emissions impacts or energy impacts from this rulemaking.

C. What are the cost impacts?

The 35 lime manufacturing plants that would be subject to the final amendments would incur minimal net costs to meet revised recordkeeping and reporting requirements and the standards for periods of startup and shutdown. Nationwide costs associated with the final requirements are estimated to be $15,271. The EPA believes that the lime manufacturing plants which are subject to the NESHAP can meet the final requirements with minimal additional capital or operational costs. Each facility will experience costs to read and understand the rule amendments. Costs associated with the elimination of 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.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs needed to comply with a final rule and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a final rule. The total costs associated with reviewing the final rule, meeting the revised recordkeeping and reporting requirements, and complying with the revised final standards are estimated to be $15,271. This is an estimated cost of $266 to $2,925 per facility, depending on the number of lime kilns operated and the type of controls installed. 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. Based on the costs associated with the elimination of the SSM exemption and the costs associated with the requirement to electronically submit compliance reports, we do not anticipate any significant economic impacts from these final amendments.

E. What are the benefits?

Although the EPA is unable to quantify reductions in HAP emissions as a result of the final amendments, we believe that the action improves the rule. Specifically, the final amendments remove SSM exemptions such that standards apply at all times. Additionally, the final amendments requiring electronic submittal of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test results will increase the usefulness of the data, is in keeping with current trends of data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community.

F. What analysis of environmental justice did we conduct?

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).

The documentation for this decision is contained in the *Risk and Technology Review Analysis of Demographic Factors for Populations Living Near Lime Manufacturing Source Category Operations,* which is available in the docket for this action. The results of the Lime Manufacturing source category demographic analysis indicated that emissions from the source category expose approximately 12 people to a cancer risk at or above 1-in-1 million and no people to a chronic noncancer TOSHI greater than 1. The percentages of the at-risk population indicate that three of the 10 demographic groups (White, African American and people below the poverty level) that are living within 50 km of facilities in the source category exceed the corresponding national percentage for the same demographic groups.

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 contained in the *Residual Risk Assessment for the Lime Manufacturing Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.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 final rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared

has been assigned EPA ICR number 2072.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

We are finalizing changes to the reporting and recordkeeping requirements for the Lime Manufacturing Plants NESHAP in the form of eliminating the SSM reporting and SSM plan requirements and requiring electronic submittal of all compliance reports (including performance test reports). Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

Respondents/affected entities: Owners or operators of lime manufacturing plants that are major sources, or that are located at, or are part of, major sources of HAP emissions, unless the lime manufacturing plant is located at a kraft pulp mill, soda pulp mill, sulfite pulp mill, sugar beet manufacturing plant, or only processes sludge containing calcium carbonate from water softening processes.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart AAAAA).

Estimated number of respondents: On average over the next 3 years, approximately 36 existing major sources will be subject to these standards. It is also estimated that one additional respondent will become subject to the emission standards over the 3-year period.

Frequency of response: The frequency of responses varies depending on the burden item.

Total estimated burden: The average annual burden to industry over the next 3 years from these recordkeeping and reporting requirements is estimated to be 9,690 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for all facilities to comply with all of the requirements in the NESHAP is estimated to be $1,810,000 (per year), of which $15,271 (first year) is for this rule, and the rest is for other costs related to continued compliance with the NESHAP including $684,000 in annualized capital and operation and maintenance costs.

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 this ICR, 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 this 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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. This action only eliminates the SSM exemption, revises other SSM related requirements, and adds electronic reporting. None of the changes will impact the small entities. The rule removes the SSM exemption and establishes emission standard for startup and shutdown. Based on the controls used at the small entities, they will not be impacted by the alternate emission standards. Thus, this action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more.

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. The EPA does not know of any lime manufacturing facilities owned or operated by Indian tribal governments. 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 and IV of the proposal preamble (84 FR 48708, September 16, 2019) and further documented in the risk report titled *Residual Risk Assessment for the Lime Manufacturing Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

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 action involves technical standards. The EPA has decided to use ANSI/ASME PTC 19.10–1981 Part 10 (2010), ''Flue and Exhaust Gas Analyses,'' as an acceptable alternative to EPA Method 3B manual portion only and not the instrumental portion. This method determines quantitatively the gaseous constituents of exhausts resulting from stationary combustion sources. This standard may be obtained from *https://www.asme.org* or from the American Society of Mechanical Engineers (ASME) at Three Park Avenue, New York, New York 10016–5990.

The EPA has decided to use ASTM D6348–03(2010) and ASTM D6348–12e1, ''Determination of Gaseous Compounds by Executive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' as alternatives to using EPA Method 320 under certain conditions and incorporate these alternatives by reference. ASTM D6348–03(2010) was previously determined equivalent to EPA Method 320 with caveats. ASTM D6348–12e1 is a revised version of ASTM D6348–03(2010) and includes a new section on accepting the results from direct measurement of a certified spike gas cylinder, but still lacks the caveats we placed on the ASTM D6348–03(2010) version. The

voluntary consensus standard (VCS), ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' is an acceptable alternative to EPA Method 320 at this time with caveats requiring inclusion of selected annexes to the standard as mandatory. When using ASTM D6348–12e1, the conditions that must be met are defined in 40 CFR 63.7142(a)(2). This field test method employs an extractive sampling system to direct stationary source effluent to an FTIR spectrometer for the identification and quantification of gaseous compounds. The ASTM D6348–03(2010) and ASTM D6348–12el standards were developed and adopted by the American Society for Testing and Materials (ATSM).

The EPA has also decided to use ASTM D6735–01 (Reapproved 2009), ''Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources Impinger Method,'' as an alternative to EPA Method 321 provided that the provisions in 40 CFR 63.7142(a)(4) are followed. The EPA used ASTM D6735–01 for the determination of HCl in EPA Methods 26, 26A, and 321 from mineral calcining exhaust sources. This method will measure the gaseous HCl and other gaseous chlorides and fluorides that pass through a PM filter. The ASTM D6735–01 standard was developed and adopted by the ASTM.

The EPA has decided to use VCS ASTM D6420–99 (Reapproved 2010), ''Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry'' as an alternative to EPA Method 18 only when the target compounds are all known, and the target compounds are all listed in ASTM D6420 as measurable. ASTM D6420 should not be used for methane and ethane because atomic mass is less than 35. ASTM D6420 should never be specified as a total volatile organic compound method. This field method determines the mass concentration of volatile organic HAP.

The ASTM standards may be obtained from *http://www.astm.org* or from the ASTM at 100 Barr Harbor Drive, Post Office C700, West Conshohocken, Pennsylvania 19428–2959.

The EPA has decided to use EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997 as guidance for how a triboelectric bag leak detection system must be installed, calibrated, operated, and maintained. This document includes FF and monitoring system descriptions; guidance on monitor selection, installation, set up, adjustment, and operation; and quality assurance procedures. This document may be obtained from *http://www.epa.gov* or from the EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

While the EPA has identified another 10 VCS as being potentially applicable to this proposed rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would not be practical due to lack of equivalency, documentation, validation date, and other import technical and policy considerations. See the memorandum titled *Voluntary Consensus Standard Results for NESHAP: Lime Manufacturing Residual Risk and Technology Review,* in the docket for this proposed rule for the reasons for these determinations.

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).

The documentation for this decision is contained in section IV.B of the proposal preamble and the technical report, *Risk and Technology Review Analysis of Demographic Factors for Populations Living Near Lime Manufacturing Source Category Operations,* which is available in the docket for this action.

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, Lime manufacturing, Intergovernmental relations, Reporting and recordkeeping requirements.

Andrew 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 revising paragraphs (e)(1), (h)(85), (86), (93), (100), and (n)(3) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(e) * * *

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for §§ 63.309(k), 63.457(k), 63.772(e) and (h), 63.865(b), 63.997(e), 63.1282(d) and (g), 63.1625(b), table 5 to subpart EEEE, 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), 63.5160(d), table 4 to subpart UUUU, table 3 to subpart YYYY, 63.7822(b), 63.7824(e), 63.7825(b), 63.9307(c), 63.9323(a), 63.11148(e), 63.11155(e), 63.11162(f), 63.11163(g), 63.11410(j), 63.11551(a), 63.11646(a), and 63.11945, table 5 to subpart AAAAA, table 5 to subpart DDDDD, table 4 to subpart JJJJJ, table 4 to subpart KKKKK, tables 4 and 5 of subpart UUUUU, table 1 to subpart ZZZZZ, and table 4 to subpart JJJJJJ.

* * * * *

(h) * * *

(85) ASTM D6348–03 (Reapproved 2010), Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, including Annexes A1 through A8, Approved October 1, 2010, IBR approved for §§ 63.1571(a), 63.4751(i), 63.4752(e), 63.4766(b), 63.7142(a) and (b), tables 4 and 5 to subpart JJJJJ, tables 4 and 6 to subpart KKKKK, tables 1, 2, and 5 to subpart UUUUU and appendix B to subpart UUUUU.

(86) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for

§§ 63.997(e), 63.1571(a), 63.2354(b), table 5 to subpart EEEE, table 4 to subpart UUUU, and 63.7142(a) and (b).

* * * * *

(93) ASTM D6420–99 (Reapproved 2010), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, Approved October 1, 2010, IBR approved for §§ 63.670(j), Table 4 to subpart UUUU, 63.7142(b), and appendix A to this part: Method 325B.

* * * * *

(100) ASTM D6735–01 (Reapproved 2009), Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method, IBR approved for § 63.7142(b), tables 4 and 5 to subpart JJJJJ, and tables 4 and 6 to subpart KKKKK.

* * * * *

(n) * * *

(3) EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997, IBR approved for §§ 63.548(e), 63.864(e), 63.7113(d), 63.7525(j), 63.7831(f), 63.8450(e), 63.8600(e), and 63.11224(f).

* * * * *

Subpart AAAAA—[Amended]

■ 3. Section 63.7083 is amended by revising paragraphs (a)(1), (2), and (b) and by adding paragraph (e) to read as follows:

§ 63.7083 When do I have to comply with this subpart?

(a) * * *

(1) If you start up your affected source before January 5, 2004, you must comply with the emission limitations no later than January 5, 2004, and you must have completed all applicable performance tests no later than July 5, 2004, except as noted in paragraphs (e)(1) and (2) of this section.

(2) If you start up your affected source after January 5, 2004, then you must comply with the emission limitations for new affected sources upon startup of your affected source and you must have completed all applicable performance tests no later than 180 days after startup, except as noted in paragraphs (e)(1) and (2) of this section.

(b) If you have an existing affected source, you must comply with the applicable emission limitations for the existing affected source, and you must have completed all applicable performance tests no later than January 5, 2007, except as noted in paragraphs (e)(1) and (2) of this section.

* * * * *

(e)(1) If your affected source commenced construction or reconstruction on or before September, 16, 2019, then the compliance date for the revised requirements promulgated at §§ 63.7090, 63.7100, 63.7112, 63.7113, 63.7121, 63.7130, 63.7131, 63.7132, 63.7140, 63.7141, 63.7142, and 63.7143 and Tables 2, 3, 4, 5, 7, 8 and 9 (except changes to the cross references to 63.6(f)(1) and (h)(1)) of 40 CFR 63, subpart AAAAA, published on July 24, 2020 is January 20, 2021.

(2) If your affected source commenced construction or reconstruction after September 16, 2019, then the compliance date for the revised requirements promulgated at §§ 63.7090, 63.7100, 63.7112, 63.7113, 63.7121, 63.7130, 63.7131, 63.7132, 63.7140, 63.7141, 63.7142, and 63.7143 and Tables 2, 3, 4, 5, 7, 8 and 9 to this subpart, published on July 24, 2020 is July 24, 2020 or the date of initial startup, whichever is later.

■ 4. Section 63.7090 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 63.7090 What emission limitations must I meet?

* * * * *

(b) You must meet each operating limit in Table 3 to this subpart that applies to you.

(c) On or after the relevant compliance date for your source as specified in §§ 63.7083(e), you must meet each startup and shutdown period emission limit in Table 2 to this subpart that applies to you.

■ 5. Section 63.7100 is amended by revising paragraphs (a), (b), (c), (d)(3), (d)(4)(iii), (d)(6) introductory text, and (e) to read as follows:

§ 63.7100 What are my general requirements for complying with this subpart?

(a) Prior to the relevant compliance date for your source as specified in § 63.7083(e), you must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction. On and after the relevant compliance date for your source as specified in § 63.7083(e), you must be in compliance with the applicable emission limitations (including operating limits) at all times.

(b) Prior to the relevant compliance date for your source as specified in § 63.7083(e), you must be in compliance with the opacity and visible emission (VE) limits in this subpart at all times, except during periods of startup, shutdown, and malfunction. On and after the relevant compliance date for your source as specified in § 63.7083(e), you must be in compliance with the applicable opacity and VE limits at all times.

(c) Prior to the relevant compliance date for your source as specified in § 63.7083(e), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). On and after the relevant compliance date for your source as specified in § 63.7083(e), you must always 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 such operation and maintenance procedures are being used will be based on information available to the Administrator which 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 source.

(d) * * *

(3) Procedures for the proper operation and maintenance of each emission unit and each air pollution control device used to meet the applicable emission limitations and operating limits in Tables 1, 2 and 3 to this subpart, respectively. On and after the relevant compliance date for your source as specified in § 63.7083(e), your OM&M plan must address periods of startup and shutdown.

(4) * * *

(iii) Prior to the relevant compliance date for your source as specified in § 63.7083(e), ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1)(i) and (ii), (3), and (4)(ii). On and after the relevant compliance date for your source as specified in § 63.7083(e), ongoing operation and maintenance procedures in accordance with the general requirements of paragraph (c) of this section and §§ 63.8(c)(1)(ii), (3), and (4)(ii); and

* * * * *

(6) Corrective actions to be taken when process or operating parameters or add-on control device parameters deviate from the operating limits

specified in Table 3 to this subpart, including:

* * * * *

(e) Prior to the relevant compliance date for your source as specified in § 63.7083(e), you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

■ 6. Section 63.7110 is amended by revising paragraphs (d) and (e) to read as follows:

§ 63.7110 By what date must I conduct performance tests and other initial compliance demonstrations?

* * * * *

(d) For each initial compliance requirement in Table 4 to this subpart that applies to you where the monitoring averaging period is 3 hours, the 3-hour period for demonstrating continuous compliance for emission units within existing affected sources at LMP begins at 12:01 a.m. on the compliance date for existing affected sources, that is, the day following completion of the initial compliance demonstration, and ends at 3:01 a.m. on the same day.

(e) For each initial compliance requirement in Table 4 to this subpart that applies to you where the monitoring averaging period is 3 hours, the 3-hour period for demonstrating continuous compliance for emission units within new or reconstructed affected sources at LMP begins at 12:01 a.m. on the day following completion of the initial compliance demonstration, as required in paragraphs (b) and (c) of this section, and ends at 3:01 a.m. on the same day.

■ 7. Section 63.7112 is amended by revising paragraphs (a), (b), (c), (j) introductory text, (k) introductory text, (k)(3), and (l) introductory text, and adding paragraph (m) to read as follows:

§ 63.7112 What performance tests, design evaluations, and other procedures must I use?

(a) You must conduct each performance test in Table 5 to this subpart that applies to you.

(b) Prior to the relevant compliance date for your source as specified in § 63.7083(e), each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions specified in Table 5 to this subpart. On and after the relevant compliance date for your source as specified in § 63.7083(e), each performance test must be conducted based on representative performance (*i.e.,* performance based on normal operating conditions) of the affected source and under the specific conditions in Table 5 to this subpart. Representative conditions exclude periods of startup and shutdown. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(c) Prior to the relevant compliance date for your source as specified in § 63.7083(e), you may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1). On and after the relevant compliance date for your source as specified in § 63.7083(e), you may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in paragraph (b) of this section.

* * * * *

(j) You must establish any applicable 3-hour block average operating limit indicated in Table 3 to this subpart according to the applicable requirements in Table 4 to this subpart and paragraphs (j)(1) through (4) of this section.

* * * * *

(k) For each building enclosing any PSH operations that is subject to a VE limit, you must conduct a VE check according to item 18 in Table 5 to this subpart, and in accordance with paragraphs (k)(1) through (3) of this section.

* * * * *

(3) The observer conducting the VE checks need not be certified to conduct EPA Method 9 in appendix A–4 to part 60 of this chapter. However, the observer must meet the training requirements as described in EPA Method 22 in appendix A–7 to part 60 of this chapter.

(l) When determining compliance with the opacity standards for fugitive emissions from PSH operations in item 8 of Table 1 to this subpart, you must conduct EPA Method 9 in appendix A–4 to part 60 of this chapter according to item 17 in Table 5 to this subpart, and in accordance with paragraphs (l)(1) through (3) of this section.

* * * * *

(m) On and after the relevant compliance date for your source as specified in § 63.7083(e), during startup, kilns must be tested hourly to determine when lime product meets the definition of on-specification lime product.

■ 8. Section 63.7113 is amended by revising paragraphs (d) and (f) to read as follows:

§ 63.7113 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(d) For each bag leak detection system (BLDS), you must meet any applicable requirements in paragraphs (a)(1) through (5) and (d)(1) through (10) of this section.

(1) The BLDS must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The sensor on the BLDS must provide output of relative PM emissions.

(3) The BLDS must be equipped with a device to continuously record the output signal from the sensor.

(4) The BLDS must have an alarm that will sound automatically when it detects an increase in relative PM emissions greater than a preset level.

(5) The alarm must be located in an area where appropriate plant personnel will be able to hear it.

(6) For a positive-pressure fabric filter (FF), each compartment or cell must have a bag leak detector (BLD). For a negative-pressure or induced-air FF, the BLD must be installed downstream of the FF. If multiple BLD are required (for either type of FF), the detectors may share the system instrumentation and alarm.

(7) Each triboelectric BLDS must be installed, calibrated, operated, and maintained according to EPA–454/R–98–015, ''Fabric Filter Bag Leak Detection Guidance,'' (incorporated by reference—see § 63.14). Other types of bag leak detection systems must be installed, operated, calibrated, and maintained according to the manufacturer's written specifications and recommendations. Standard operating procedures must be incorporated into the OM&M plan.

(8) At a minimum, initial adjustment of the system must consist of establishing the baseline output in both of the following ways, according to section 5.0 of the EPA–454/R–98–015, ''Fabric Filter Bag Leak Detection Guidance,'' (incorporated by reference—see § 63.14):

(i) Adjust the range and the averaging period of the device.

(ii) Establish the alarm set points and the alarm delay time.

(9) After initial adjustment, the sensitivity or range, averaging period,

alarm set points, or alarm delay time may not be adjusted except as specified in the OM&M plan required by § 63.7100(d). In no event may the range be increased by more than 100 percent or decreased by more than 50 percent over a 365-day period unless such adjustment follows a complete FF inspection that demonstrates that the FF is in good operating condition, as defined in section 5.2 of the ''Fabric Filter Bag Leak Detection Guidance,'' (incorporated by reference—see § 63.14). Record each adjustment.

(10) Record the results of each inspection, calibration, and validation check.

* * * * *

(f) For each emission unit equipped with an add-on air pollution control device, you must inspect each capture/collection and closed vent system at least once each calendar year to ensure that each system is operating in accordance with the operating requirements in item 6 of Table 3 to this subpart and record the results of each inspection.

* * * * *

■ 9. Section 63.7114 is amended by revising paragraphs (a) introductory text and (b) to read as follows:

§ 63.7114 How do I demonstrate initial compliance with the emission limitations standard?

(a) You must demonstrate initial compliance with each emission limit in Table 1 to this subpart that applies to you, according to Table 4 to this subpart. For existing lime kilns and their associated coolers, you may perform VE measurements in accordance with EPA Method 9 of appendix A to part 60 in lieu of installing a COMS or PM detector if any of the conditions in paragraphs (a)(1) through (3) of this section exist:

* * * * *

(b) You must establish each site-specific operating limit in Table 3 to this subpart that applies to you according to the requirements in § 63.7112(j) and Table 5 to this subpart. Alternative parameters may be monitored if approval is obtained according to the procedures in § 63.8(f).

* * * * *

■ 10. Section 63.7120 is amended by revising paragraph (c) introductory text to read as follows and removing paragraph (c)(3).

§ 63.7120 How do I monitor and collect data to demonstrate continuous compliance?

* * * * *

(c) Data recorded during the conditions described in paragraphs (c)(1) and (2) of this section may not be used either in data averages or calculations of emission or operating limits; or in fulfilling a minimum data availability requirement. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

* * * * *

■ 11. Section 63.7121 is amended by revising paragraphs (a), (b), (d), (e) introductory text, and (e)(3) to read as follows:

§ 63.7121 How do I demonstrate continuous compliance with the emission limitations standard?

(a) You must demonstrate continuous compliance with each emission limitation in Tables 1 and 3 to this subpart that applies to you according to the methods specified in Tables 6 and 7 to this subpart.

(b) You must report each instance in which you did not meet each operating limit, opacity limit, and VE limit in Tables 2, 3 and 7 to this subpart that applies to you. These deviations must be reported according to the requirements in § 63.7131.

* * * * *

(d) Prior to the relevant compliance date for your source as specified in § 63.7083(e), consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction 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 of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(e) For each PSH operation subject to an opacity limit as specified in Table 1 to this subpart, and any vents from buildings subject to an opacity limit, you must conduct a VE check according to item 1 in Table 7 to this subpart, and as follows:

* * * * *

(3) The observer conducting the VE checks need not be certified to conduct EPA Method 9 in appendix A–4 to part 60 of this chapter but must meet the training requirements as described in EPA Method 22 of appendix A–7 to part 60 of this chapter.

* * * * *

■ 12. Section 63.7130 is amended by revising paragraph (e) to read as follows:

§ 63.7130 What notifications must I submit and when?

* * * * *

(e) If you are required to conduct a performance test, design evaluation, opacity observation, VE observation, or other initial compliance demonstration as specified in Table 4 or 5 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). Beginning on the relevant compliance date for your source as specified in § 63.7083(e), submit all subsequent Notification of Compliance Status following the procedure specified in § 63.7131(h).

(1) For each initial compliance demonstration required in Table 4 to this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each compliance demonstration required in Table 6 to this subpart that includes a performance test conducted according to the requirements in Table 5 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

■ 13. Section 63.7131 is amended by:
■ a. Revising paragraphs (a) and paragraph (b) introductory text;
■ b. Adding paragraph (b)(6);
■ c. Revising paragraphs (c)(4), paragraphs (d), (e) introductory text, and (e)(2);
■ d. Adding paragraph (e)(12);
■ e. Revising paragraph (f); and
■ f. Adding paragraphs (g) through (j).

The revisions and additions read as follows:

§ 63.7131 What reports must I submit and when?

(a) You must submit each report listed in Table 8 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date specified in Table 8 to this subpart and according to the requirements in paragraphs (b)(1) through (6) of this section:

* * * * *

(6) Beginning on the relevant compliance date for your source as specified in § 63.7083(e), submit all subsequent compliance reports following the procedure specified in paragraph (h) of this section.

(c) * * *

(4) Prior to the relevant compliance date for your source as specified in

§ 63.7083(e), if you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i).

* * * * *

(d) For each deviation from an emission limitation (emission limit, operating limit, opacity limit, and VE limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information specified in paragraphs (c)(1) through (4) and (d)(1) and (2) of this section. The deviations must be reported in accordance with the requirements in § 63.10(d) prior to the relevant compliance date for your source as specified in § 63.7083(e) and the requirements in § 63.10(d)(1)–(4) beginning on the relevant compliance date for your source as specified in § 63.7083(e).

(1) The total operating time of each emission unit during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), and the corrective action taken.

(3) An estimate of the quantity of each regulated pollutant emitted over a particulate matter emission limit, and a description of the method used to estimate the emissions.

(e) For each deviation from an emission limitation (emission limit, operating limit, opacity limit, and VE limit) occurring at an affected source where you are using a CMS to comply with the emission limitation in this subpart, you must include the information specified in paragraphs (c)(1) through (4) and (e)(1) through (11) of this section, except that beginning on the relevant compliance date for your source as specified in 63.7083(e), the semiannual compliance report must also include the information included in paragraph (e)(12) of this section. This includes periods of startup, shutdown, and malfunction.

* * * * *

(2) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks.

* * * * *

(12) An estimate of the quantity of each regulated pollutant emitted over a particulate matter emission limit, and a description of the method used to estimate the emissions.

(f) Each facility that has obtained a title V operating permit pursuant to part 70 or part 71 of this chapter must report all deviations as defined in this subpart in the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A) of this chapter. If you submit a compliance report specified in Table 8 to this subpart along with, or as part of, the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A) of this chapter, and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation you may have to report deviations from permit requirements to the permit authority.

(g) If you are required to submit reports following the procedure specified in this paragraph, you must submit reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). You must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium 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 must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(h) Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (h)(1) through (3) of this section.

(1) *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.* Submit the results of the performance test to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) *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.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (i) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be 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. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium 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 must be submitted to the EPA via the EPA's CDX as described in paragraph (i) of this section.

(i) If you are required to electronically submit a report or notification through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (i)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) 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 has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The 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.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(j) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (j)(1) through (5) of this section.

(1) You may submit a claim if 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 five business days prior to the date the submission is due. 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).

(2) 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 has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The 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.

(4) 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.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 14. Section 63.7132 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 63.7132 What records must I keep?

(a) * * *

(2) Prior to the relevant compliance date for your source as specified in § 63.7083(e), the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. On and after the relevant compliance date for your source as specified in § 63.7083(e), the records in paragraphs (a)(2)(i) and (ii) of this section.

(i) You must keep records for each startup period of the date, the time startup began, the time began producing on-specification lime product, and the time discharge from the kiln began for any affected source that is subject to a standard during startup that differs from the standard applicable at other times.

(ii) You must keep records of the date, time, cause and duration of each malfunction (as defined in 40 CFR 63.2) that causes an affected source to fail to meet an applicable standard; if there was also a monitoring malfunction, the date, time, cause, and duration of the monitoring malfunction; the record must list the affected source or equipment; if there was a failure to meet a particulate matter emissions limit, an estimate of the volume of each regulated pollutant emitted over the limit, and a description of the method used to estimate the emissions.

* * * * *

(c) You must keep the records required by Tables 6 and 7 to this subpart to show continuous compliance with each emission limitation that applies to you.

* * * * *

■ 15. Section 63.7133 is amended by adding paragraph (d) to read as follows:

§ 63.7133 In what form and for how long must I keep my records?

* * * * *

(d) Any records required to be maintained by this part 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.

■ 16. Section 63.7140 is amended to read as follows:

§ 63.7140 What parts of the General Provisions apply to me?

Table 9 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you. When there is overlap between subpart A and subpart AAAAA, as indicated in the ''Explanations'' column in Table 8, subpart AAAAA takes precedence.

■ 17. Section 63.7141 is amended by revising paragraph (c) to read as follows:

§ 63.7141 Who implements and enforces this subpart?

* * * * *

(c) The authorities that will not be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (7) of this section.

(1) Approval of alternatives to the non-opacity emission limitations in § 63.7090(a).

(2) Approval of alternative opacity emission limitations in § 63.7090(a) and (c).

(3) Approval of alternatives to the operating limits in § 63.7090(b).

(4) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(5) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(6) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

(7) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 18. Section 63.7142 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4);

■ c. Adding new paragraph (a)(2);

■ d. Revising newly designated paragraph (a)(4) introductory text, and paragraphs (a)(4)(i), and (a)(4)(v);

■ e. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4);

■ f. Adding new paragraph (b)(2); and

■ g. Revising newly designated paragraphs (b)(3) and (b)(4).

The revisions and additions read as follows:

§ 63.7142 What are the requirements for claiming area source status?

(a) * * *

(1) EPA Method 320 of appendix A to this part, or

(2) As an alternative to Method 320 of Appendix A, ASTM D6348–03 (Reapproved 2010) including Annexes A1 through A8 (incorporated by reference—see § 63.14). ASTM D6348–12e1 (incorporated by reference—see § 63.14) is an acceptable alternative to EPA Method 320 of appendix A, provided that the provisions of paragraphs (a)(2)(i) and (ii) of this section are followed:

(i) The test plan preparation and implementation in the Annexes to ASTM D6348–03 (Reapproved 2010), Sections A1 through A8 are mandatory.

(ii) In ASTM D6348–03 (Reapproved 2010) Annex A5 (Analyte Spiking Technique), the percent recovery (%R) must be determined for each target analyte (Equation A5.5). In order for the test data to be acceptable for a compound, %R must be greater than or equal to 70 percent and less than or equal to 130 percent. If the %R value does not meet this criterion for a target compound, the test data are not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation: Reported Results = ((Measured Concentration in the Stack))/(%R) × 100; or

* * * * *

(4) As an alternative to EPA Method 321, ASTM Method D6735–01 (Reapproved 2009), (incorporated by reference—see § 63.14), provided that the provisions in paragraphs (a)(3)(i) through (vi) of this section are followed.

(i) A test must include three or more runs in which a pair of samples is obtained simultaneously for each run according to section 11.2.6 of ASTM Method D6735–01 (Reapproved 2009).

* * * * *

(v) The post-test analyte spike procedure of section 11.2.7 of ASTM Method D6735–01 (Reapproved 2009) is conducted, and the percent recovery is calculated according to section 12.6 of ASTM Method D6735–01 (Reapproved 2009).

* * * * *

(b) * * *

(2) As an alternative to Method 320 of Appendix A, ASTM D6348–03 (Reapproved 2010) including Annexes A1 through A8 (incorporated by reference—see § 63.14). ASTM D6348–12e1 (incorporated by reference—see § 63.14) is an acceptable alternative to EPA Method 320 of appendix A, provided that the provisions of paragraphs (b)(2)(i) and (ii) of this section are followed:

(i) The test plan preparation and implementation in the Annexes to ASTM D6348–03 (Reapproved 2010), Sections A1 through A8 are mandatory.

(ii) In ASTM D6348–03 (Reapproved 2010) Annex A5 (Analyte Spiking Technique), the percent recovery (%R) must be determined for each target analyte (Equation A5.5). In order for the test data to be acceptable for a compound, %R must be greater than or equal to 70 percent and less than or equal to 130 percent. If the %R value does not meet this criterion for a target compound, the test data are not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation: Reported Results = ((Measured Concentration in the Stack))/(%R) × 100; or

(3) Method 18 of appendix A–6 to part 60 of this chapter; or

(4) As an alternative to Method 18, ASTM D6420–99 (Reapproved 2010), (incorporated by reference—see § 63.14), provided that the provisions of paragraphs (b)(3)(i) through (iv) of this section are followed:

(i) The target compound(s) are those listed in section 1.1 of ASTM D6420–99 (Reapproved 2010) as measurable;

(ii) This ASTM should not be used for methane and ethane because their atomic mass is less than 35 and

(iii) ASTM D6420–99 (Reapproved 2010) should never be specified as a total VOC method.

* * * * *

■ 19. Section 63.7143 is amended by:

■ a. Revising paragraph (3) under the definition of ''Deviation.''

■ b. Adding in alphabetical order definitions for ''On-specification lime product,'' ''Shutdown'' and ''Startup.''

The revisions read as follows:

§ 63.7143 What definitions apply to this subpart?

* * * * *

Deviation * * *

(3) Prior to the relevant compliance date for your source as specified in § 63.7083(e), fails to meet any emission limitation (including any operating limit) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is allowed by this subpart.

* * * * *

On-specification Lime Product means lime product that has been sufficiently calcined to meet end use requirements.

* * * * *

Shutdown means the cessation of kiln operation. Shutdown begins when feed to the kiln is reduced below planned production quantities and ends when stone feed is halted and fuel combustion from the main burner ceases.

* * * * *

Startup means the beginning of kiln operation. Startup begins when a shutdown kiln begins firing fuel in the main burner. Startup ends when the lime kiln first generates on-specification lime product or 12 hours following first discharge from the kiln, whichever is earlier.

* * * * *

■ 20. Table 1 to subpart AAAAA is amended by revising the introductory text to read as follows:

Table 1 to Subpart AAAAA of Part 63—Emission Limits

As required in § 63.7090(a), you must meet each emission limit in the following table that applies to you, except for kilns and coolers during startup and shutdown (See Table 2 for emission limits for kilns and coolers during startup and shutdown).

* * * * *

■ 21. Redesignate tables 2 through 8 to subpart AAAAA as tables 3 through 9 to subpart AAAA.

■ 22. Add new Table 2 to subpart AAAAA to read as follows:

As required in § 63.7090(b), on and after the relevant compliance date for your source as specified in § 63.7083(e), you must meet each emission limit in the following table that applies to you.

TABLE 2 TO SUBPART AAAAA OF PART 63—STARTUP AND SHUTDOWN EMISSION LIMITS FOR KILNS AND COOLERS

For . . .	You must meet the following emission limit	You have demonstrated compliance, if after following the requirements in § 63.7112 . . .
1. All new and existing lime kilns and their associated coolers equipped with an FF or an ESP during each startup.	Emissions must not exceed 15 percent opacity (based on startup period block average).	i. Installed, maintained, calibrated and operated a COMS as required by 40 CFR part 63, subpart A, General Provisions and according to PS–1 of appendix B to part 60 of this chapter, except as specified in § 63.7113(g)(2); ii. Collected the COMS data at a frequency of at least once every 15 seconds, determining block averages for each startup period and demonstrating for each startup block period the average opacity does not exceed 15 percent.
2. All existing lime kilns and their associated coolers that have a wet scrubber during each startup.	See item 2.b of Table 3 of subpart AAAAA for emission limit.	See item 1 of Table 6 of subpart AAAAA for requirements for demonstrating compliance.
3. All new and existing lime kilns and their associated coolers equipped with an FF or an ESP during shutdown.	Emissions must not exceed 15 percent opacity (based on 6-minute average opacity for any 6-minute block period does not exceed 15 percent).	i. Installed, maintained, calibrated and operated a COMS as required by 40 CFR part 63, subpart A, General Provisions and according to PS–1 of appendix B to part 60 of this chapter, except as specified in § 63.7113(g)(2); ii. Collecting the COMS data at a frequency of at least once every 15 seconds, determining block averages for each 6-minute period and demonstrating for each 6-minute block period the average opacity does not exceed 15 percent.
4. All existing lime kilns and their associated coolers that have a wet scrubber during shutdown.	See item 2.b of Table 3 of subpart AAAAA for emission limit.	See item 1 of Table 6 of subpart AAAAA for requirements for demonstrating compliance.

■ 23. Revise newly redesignated Table 3 to subpart AAAAA to read as follows:

As required in § 63.7090(b), you must meet each operating limit in the following table that applies to you, except for kilns and coolers during startup and shutdown (See Table 2 for operating limits during startup and shutdown).

TABLE 3 TO SUBPART AAAAA OF PART 63—OPERATING LIMITS

For . . .	You must . . .
1. Each lime kiln and each lime cooler (if there is a separate exhaust to the atmosphere from the associated lime cooler) equipped with an FF.	Maintain and operate the FF such that the BLDS or PM detector alarm condition does not exist for more than 5 percent of the total operating time in a 6-month period; and comply with the requirements in § 63.7113(d) through (f) and Table 6 to this subpart. In lieu of a BLDS or PM detector maintain the FF such that the 6-minute average opacity for any 6-minute block period does not exceed 15 percent; and comply with the requirements in § 63.7113(f) and (g) and Table 6 to this subpart.
2. Each lime kiln equipped with a wet scrubber.	a. Maintain the 3-hour block exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the most recent PM performance test; and b. Maintain the 3-hour block scrubbing liquid flow rate greater than the flow rate operating limit established during the most recent performance test.
3. Each lime kiln equipped with an electrostatic precipitator.	Install a PM detector and maintain and operate the ESP such that the PM detector alarm is not activated and alarm condition does not exist for more than 5 percent of the total operating time in a 6-month period, and comply with § 63.7113(e); or, maintain the ESP such that the 6-minute average opacity for any 6-minute block period does not exceed 15 percent, and comply with the requirements in § 63.7113(g); and comply with the requirements in § 63.7113(f) and Table 6 to this subpart.
4. Each PSH operation subject to a PM limit which uses a wet scrubber.	Maintain the 3-hour block average exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the PM performance test; and maintain the 3-hour block average scrubbing liquid flow rate greater than or equal to the flow rate operating limit established during the performance test.
5. All affected sources	Prepare a written OM&M plan; the plan must include the items listed in § 63.7100(d) and the corrective actions to be taken when required in Table 6 to this subpart.
6. Each emission unit equipped with an add-on air pollution control device.	a. Vent captured emissions through a closed system, except that dilution air may be added to emission streams for the purpose of controlling temperature at the inlet to an FF; and b. Operate each capture/collection system according to the procedures and requirements in the OM&M plan.

■ 24. Revise newly redesignated Table 4 to subpart AAAAA to read as follows:

As required in § 63.7114, you must demonstrate initial compliance with each emission limitation that applies to you, according to the following table.

TABLE 4 TO SUBPART AAAAA OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITS

For . . .	For the following emission limit . . .	You have demonstrated initial compliance, if after following the requirements in § 63.7112 . . .
1. All new or existing lime kilns and their associated lime coolers (kilns/coolers).	PM emissions must not exceed 0.12 lb/tsf for all existing kilns/coolers with dry controls, 0.60 lb/tsf for existing kilns/coolers with wet scrubbers, 0.10 lb/tsf for all new kilns/coolers, or a weighted average calculated according to Eq. 3 in § 63.7112.	The kiln outlet PM emissions (and if applicable, summed with the separate cooler PM emissions), based on the PM emissions measured using Method 5 in appendix A to part 60 of this chapter and the stone feed rate measurement over the period of initial performance test, do not exceed the emission limit; if the lime kiln is controlled by an FF or ESP and you are opting to monitor PM emissions with a BLDS or PM detector, you have installed and are operating the monitoring device according to the requirements in § 63.7113(d) or (e), respectively; and if the lime kiln is controlled by an FF or ESP and you are opting to monitor PM emissions using a COMS, you have installed and are operating the COMS according to the requirements in § 63.7113(g).
2. Stack emissions from all PHS operations at a new or existing affected source.	PM emissions must not exceed 0.05 g/dscm	The outlet PM emissions, based on Method 5 or Method 17 in appendix A to part 60 of this chapter, over the period of the initial performance test do not exceed 0.05 g/dscm; and if the emission unit is controlled with a wet scrubber, you have a record of the scrubber's pressure drop and liquid flow rate operating parameters over the 3-hour performance test during which emissions did not exceed the emissions limitation.
3. Stack emissions from all PSH operations at a new or existing affected source, unless the stack emissions are discharged through a wet scrubber control device.	Emissions must not exceed 7 percent opacity	Each of the thirty 6-minute opacity averages during the initial compliance period, using Method 9 in appendix A to part 60 of this chapter, does not exceed the 7 percent opacity limit. At least thirty 6-minute averages must be obtained.
4. Fugitive emissions from all PSH operations at a new or existing affected source.	Emissions must not exceed 10 percent opacity	Each of the 6-minute opacity averages during the initial compliance period, using Method 9 in appendix A to part 60 of this chapter, does not exceed the 10 percent opacity limit.
5. All PSH operations at a new or existing affected source, enclosed in building.	All of the individually affected PSH operations must comply with the applicable PM and opacity emission limitations for items 2 through 4 of this Table 4, or the building must comply with the following: There must be no VE from the building, except from a vent, and vent emissions must not exceed the emission limitations in items 2 and 3 of this Table 4.	All the PSH operations enclosed in the building have demonstrated initial compliance according to the applicable requirements for items 2 through 4 of this Table 4; or if you are complying with the building emission limitations, there are no VE from the building according to item 18 of Table 5 to this subpart and § 63.7112(k), and you demonstrate initial compliance with applicable building vent emissions limitations according to the requirements in items 2 and 3 of this Table 4.
6. Each FF that controls emissions from only an individual storage bin.	Emissions must not exceed 7 percent opacity	Each of the ten 6-minute averages during the 1-hour initial compliance period, using Method 9 in appendix A to part 60 of this chapter, does not exceed the 7 percent opacity limit.
7. Each set of multiple storage bins with combined stack emissions.	You must comply with emission limitations in items 2 and 3 of this Table 4.	You demonstrate initial compliance according to the requirements in items 2 and 3 of this Table 4.

■ 25. Revise newly redesignated Table 5 to subpart AAAAA to read as follows:

As required in § 63.7112, you must conduct each performance test in the following table that applies to you.

TABLE 5 TO SUBPART AAAAA OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler.	Select the location of the sampling port and the number of traverse ports.	Method 1 or 1A of appendix A to part 60 of this chapter; and § 63.6(d)(1)(i).	Sampling sites must be located at the outlet of the control device(s) and prior to any releases to the atmosphere.

TABLE 5 TO SUBPART AAAAA OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
2. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler.	Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter.	Not applicable.
3. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler.	Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter.	You may use ASME PTC 19.10–1981—Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to using the manual procedures (but not instrumental procedures) in Method 3B.
4. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler.	Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	Not applicable.
5. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler, and which uses a negative pressure PM control device.	Measure PM emissions.	Method 5 in appendix A to part 60 of this chapter.	Conduct the test(s) when the source is operating at representative operating conditions in accordance with § 63.7(e) before the relevant compliance date for your source as specified in § 63.7083(e) and § 63.7112(b) on and after the relevant compliance date for your source as specified in § 63.7083(e); the minimum sampling volume must be 0.85 dry standard cubic meter (dscm) (30 dry standard cubic foot (dscf)); if there is a separate lime cooler exhaust to the atmosphere, you must conduct the Method 5 test of the cooler exhaust concurrently with the kiln exhaust test.
6. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler, and which uses a positive pressure FF or ESP.	Measure PM emissions.	Method 5D in appendix A to part 60 of this chapter.	Conduct the test(s) when the source is operating at representative operating conditions in accordance with § 63.7(e) before the relevant compliance date for your source as specified in § 63.7083(e) and § 63.7112(b) on and after the relevant compliance date for your source as specified in § 63.7083(e); if there is a separate lime cooler exhaust to the atmosphere, you must conduct the Method 5 test of the separate cooler exhaust concurrently with the kiln exhaust test.
7. Each lime kiln	Determine the mass rate of stone feed to the kiln during the kiln PM emissions test.	Any suitable device	Calibrate and maintain the device according to manufacturer's instructions; the measuring device used must be accurate to within ±5 percent of the mass rate of stone feed over its operating range.
8. Each lime kiln equipped with a wet scrubber.	Establish the operating limit for the average gas stream pressure drop across the wet scrubber.	Data for the gas stream pressure drop measurement device during the kiln PM performance test.	The continuous pressure drop measurement device must be accurate within plus or minus 1 percent; you must collect the pressure drop data during the period of the performance test and determine the operating limit according to § 63.7112(j).
9. Each lime kiln equipped with a wet scrubber.	Establish the operating limit for the average liquid flow rate to the scrubber.	Data from the liquid flow rate measurement device during the kiln PM performance test.	The continuous scrubbing liquid flow rate measuring device must be accurate within plus or minus 1 percent; you must collect the flow rate data during the period of the performance test and determine the operating limit according to § 63.7112(j).
10. Each lime kiln equipped with a FF or ESP that is monitored with a PM detector.	Have installed and have operating the BLDS or PM detector prior to the performance test.	Standard operating procedures incorporated into the OM&M plan.	According to the requirements in § 63.7113(d) or (e), respectively.

TABLE 5 TO SUBPART AAAAA OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
11. Each lime kiln equipped with a FF or ESP that is monitored with a COMS.	Have installed and have operating the COMS prior to the performance test.	Standard operating procedures incorporated into the OM&M plan and as required by 40 CFR part 63, subpart A, General Provisions and according to PS–1 of appendix B to part 60 of this chapter, except as specified in § 63.7113(g)(2).	According to the requirements in § 63.7113(g).
12. Each stack emission from a PSH operation, vent from a building enclosing a PSH operation, or set of multiple storage bins with combined stack emissions, which is subject to a PM emission limit.	Measure PM emissions.	Method 5 or Method 17 in appendix A to part 60 of this chapter.	The sample volume must be at least 1.70 dscm (60 dscf); for Method 5, if the gas stream being sampled is at ambient temperature, the sampling probe and filter may be operated without heaters; and if the gas stream is above ambient temperature, the sampling probe and filter may be operated at a temperature high enough, but no higher than 121 °C (250 °F), to prevent water condensation on the filter (Method 17 may be used only with exhaust gas temperatures of not more than 250 °F).
13. Each stack emission from a PSH operation, vent from a building enclosing a PSH operation, or set of multiple storage bins with combined stack emissions, which is subject to an opacity limit.	Conduct opacity observations.	Method 9 in appendix A to part 60 of this chapter.	The test duration must be for at least 3 hours and you must obtain at least thirty, 6-minute averages.
14. Each stack emissions source from a PSH operation subject to a PM or opacity limit, which uses a wet scrubber.	Establish the average gas stream pressure drop across the wet scrubber.	Data for the gas stream pressure drop measurement device during the PSH operation stack PM performance test.	The pressure drop measurement device must be accurate within plus or minus 1 percent; you must collect the pressure drop data during the period of the performance test and determine the operating limit according to § 63.7112(j).
15. Each stack emissions source from a PSH operation subject to a PM or opacity limit, which uses a wet scrubber.	Establish the operating limit for the average liquid flow rate to the scrubber.	Data from the liquid flow rate measurement device during the PSH operation stack PM performance test.	The continuous scrubbing liquid flow rate measuring device must be accurate within plus or minus 1 percent; you must collect the flow rate data during the period of the performance test and determine the operating limit according to § 63.7112(j).
16. Each FF that controls emissions from only an individual, enclosed, new or existing storage bin.	Conduct opacity observations.	Method 9 in appendix A to part 60 of this chapter.	The test duration must be for at least 1 hour and you must obtain ten 6-minute averages.
17. Fugitive emissions from any PSH operation subject to an opacity limit.	Conduct opacity observations.	Method 9 in appendix A to part 60 of this chapter.	The test duration must be for at least 3 hours, but the 3-hour test may be reduced to 1 hour if, during the first 1-hour period, there are no individual readings greater than 10 percent opacity and there are no more than three readings of 10 percent during the first 1-hour period.
18. Each building enclosing any PSH operation, that is subject to a VE limit.	Conduct VE check	The specifications in § 63.7112(k)	The performance test must be conducted while all affected PSH operations within the building are operating; the performance test for each affected building must be at least 75 minutes, with each side of the building and roof being observed for at least 15 minutes.

■ 26. Amend newly redesignated Table 6 to subpart AAAAA by revising the introductory text to read as follows:

As required in § 63.7121, you must demonstrate continuous compliance with each operating limit listed in Table 3 to subpart AAAAA that applies to you, according to the following table:

Table 6 to Subpart AAAAA of Part 63—Continuous Compliance With Operating Limits

* * * * *

■ 27. Revise newly redesignated Table 7 to subpart AAAAA to read as follows:

As required in § 63.7121 you must periodically demonstrate compliance with each opacity and VE limit that applies to you, according to the following table:

TABLE 7 TO SUBPART AAAAA OF PART 63—PERIODIC MONITORING FOR COMPLIANCE WITH OPACITY AND VISIBLE EMISSIONS LIMITS

For . . .	For the following emission limitation . . .	You must demonstrate ongoing compliance . . .
1. Each PSH operation subject to an opacity limitation as required in Table 1 to this subpart, or any vents from buildings subject to an opacity limitation.	a. 7–10 percent opacity, depending on the PSH operation, as required in Table 1 to this subpart.	(i) Conducting a monthly 1-minute VE check of each emission unit in accordance with § 63.7121(e); the check must be conducted while the affected source is in operation; (ii) If no VE are observed in 6 consecutive monthly checks for any emission unit, you may decrease the frequency of VE checking from monthly to semi-annually for that emission unit; if VE are observed during any semiannual check, you must resume VE checking of that emission unit on a monthly basis and maintain that schedule until no VE are observed in 6 consecutive monthly checks; (iii) If no VE are observed during the semiannual check for any emission unit, you may decrease the frequency of VE checking from semi-annually to annually for that emission unit; if VE are observed during any annual check, you must resume VE checking of that emission unit on a monthly basis and maintain that schedule until no VE are observed in 6 consecutive monthly checks; and (iv) If VE are observed during any VE check, you must conduct a 6-minute test of opacity in accordance with Method 9 of appendix A to part 60 of this chapter; you must begin the Method 9 test within 1 hour of any observation of VE and the 6-minute opacity reading must not exceed the applicable opacity limit.
2. Any building subject to a VE limit, according to item 8 of Table 1 to this subpart.	a. No VE	(i) Conducting a monthly VE check of the building, in accordance with the specifications in § 63.7112(k); the check must be conducted while all the enclosed PSH operations are operating; (ii) The check for each affected building must be at least 5 minutes, with each side of the building and roof being observed for at least 1 minute; (iii) If no VE are observed in 6 consecutive monthly checks of the building, you may decrease the frequency of checking from monthly to semi-annually for that affected source; if VE are observed during any semi-annual check, you must resume checking on a monthly basis and maintain that schedule until no VE are observed in 6 consecutive monthly checks; and (iv) If no VE are observed during the semi-annual check, you may decrease the frequency of checking from semi-annually to annually for that affected source; and if VE are observed during any annual check, you must resume checking of that emission unit on a monthly basis and maintain that schedule until no VE are observed in 6 consecutive monthly checks (the source is in compliance if no VE are observed during any of these checks).

■ 28. Revise newly redesignated Table 8 to subpart AAAAA to read as follows:

As required in § 63.7131, you must submit each report in this table that applies to you.

TABLE 8 TO SUBPART AAAAA OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. If there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and VE limit) that applies to you, a statement that there were no deviations from the emission limitations during the reporting period;	Semiannually according to the requirements in § 63.7131(b).
	b. If there were no periods during which the CMS, including any operating parameter monitoring system, was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out-of-control during the reporting period;	Semiannually according to the requirements in § 63.7131(b).
	c. If you have a deviation from any emission limitation (emission limit, operating limit, opacity limit, and VE limit) during the reporting period, the report must contain the information in § 63.7131(d);	Semiannually according to the requirements in § 63.7131(b).

TABLE 8 TO SUBPART AAAAA OF PART 63—REQUIREMENTS FOR REPORTS—Continued

You must submit a . . .	The report must contain . . .	You must submit the report . . .
	d. If there were periods during which the CMS, including any operating parameter monitoring system, was out-of-control, as specified in § 63.8(c)(7), the report must contain the information in § 63.7131(e); and	Semiannually according to the requirements in § 63.7131(b).
	e. Before the relevant compliance date for your source as specified in § 63.7083(e), if you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i). On and after the relevant compliance date for your source as specified in § 63.7083(e), if you had a startup, shutdown or malfunction during the reporting period and you failed to meet an applicable standard, the compliance report must include the information in § 63.7131(c)(3).	Semiannually according to the requirements in § 63.7131(b).
2. Before the relevant compliance date for your source as specified in § 63.7083(e), an immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the SSMP.
3. Before the relevant compliance date for your source as specified in § 63.7083(e), an immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority. See § 63.10(d)(5)(ii).
(4) Performance Test Report	The information required in § 63.7(g)	According to the requirements of § 63.7131.

■ 29. Revise newly redesignated Table 9 to subpart AAAAA to read as follows:

As required in § 63.7140, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 9 TO SUBPART AAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA

Citation	Summary of requirement	Am I subject to this requirement?	Explanations
§ 63.1(a)(1)–(4)	Applicability	Yes.	
§ 63.1(a)(5)		No.	
§ 63.1(a)(6)	Applicability	Yes.	
§ 63.1(a)(7)–(a)(9)		No.	
§ 63.1(a)(10)–(a)(14)	Applicability	Yes.	
§ 63.1(b)(1)	Initial Applicability Determination	Yes	§§ 63.7081 and 63.7142 specify additional applicability determination requirements.
§ 63.1(b)(2)		No.	
§ 63.1(b)(3)	Initial Applicability Determination	Yes.	
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)	Permit Requirements	No	Area sources not subject to subpart AAAAA, except all sources must make initial applicability determination.
§ 63.1(c)(3)–(4)		No.	
§ 63.1(c)(5)	Area Source Becomes Major	Yes.	
§ 63.1(d)		No.	
§ 63.1(e)	Applicability of Permit Program	Yes.	
§ 63.2	Definitions	Yes	Additional definitions in § 63.7143.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(a)(2)	Prohibited Activities	Yes.	
§ 63.4(a)(3)–(a)(5)		No.	

TABLE 9 TO SUBPART AAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA—Continued

Citation	Summary of requirement	Am I subject to this requirement?	Explanations
§ 63.4(b)–(c)	Circumvention, Severability	Yes.	
§ 63.5(a)(1)–(2)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)	Compliance Dates	Yes.	
§ 63.5(b)(2)		No.	
§ 63.5(b)(3)–(4)	Construction Approval, Applicability.	Yes.	
§ 63.5(b)(5)		No.	
§ 63.5(b)(6)	Applicability	Yes.	
§ 63.5(c)		No.	
§ 63.5(d)(1)–(4)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)(1)–(2)	Approval of Construction/Reconstruction.	Yes.	
§ 63.6(a)	Compliance for Standards and Maintenance.	Yes.	
§ 63.6(b)(1)–(5)	Compliance Dates	Yes.	
§ 63.6(b)(6)		No.	
§ 63.6(b)(7)	Compliance Dates	Yes.	
§ 63.6(c)(1)–(2)	Compliance Dates	Yes.	
§ 63.6(c)(3)–(c)(4)		No.	
§ 63.6(c)(5)	Compliance Dates	Yes.	
§ 63.6(d)		No.	
§ 63.6(e)(1)(i)	General Duty to Minimize Emissions.	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	On and after the relevant compliance date for your source as specified in § 63.7083(e), see § 63.7100 for general duty requirement.
§ 63.6(e)(1)(ii)	Requirement to Correct Malfunctions ASAP.	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	
§ 63.6(e)(1)(iii)	Operation and Maintenance Requirements.	Yes.	
§ 63.6(e)(2)		No	[Reserved].
§ 63.6(e)(3)	Startup, Shutdown Malfunction Plan.	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	On and after the relevant compliance date for your source as specified in § 63.7083(e), the OM&M plan must address periods of startup and shutdown. See § 63.7100(d).
§ 63.6(f)(1)	SSM exemption	No	See § 63.7100. For periods of startup and shutdown, see § 63.7090(c).
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)(1)–(g)(3)	Alternative Standard	Yes.	
§ 63.6(h)(1)	SSM exemption	No	See § 63.7100. For periods of startup and shutdown, see § 63.7090(c).
§ 63.6(h)(2)	Methods for Determining Compliance.	Yes.	
§ 63.6(h)(3)		No.	
§ 63.6(h)(4)–(h)(5)(i)	Opacity/VE Standards	Yes	This requirement only applies to opacity and VE performance checks required in Table 4 to subpart AAAAA.
§ 63.6(h)(5) (ii)–(iii)	Opacity/VE Standards	No	Test durations are specified in subpart AAAAA; subpart AAAAA takes precedence.
§ 63.6(h)(5)(iv)	Opacity/VE Standards	No.	
§ 63.6(h)(5)(v)	Opacity/VE Standards	Yes.	
§ 63.6(h)(6)	Opacity/VE Standards	Yes.	
§ 63.6(h)(7)	COM Use	Yes.	
§ 63.6(h)(8)	Compliance with Opacity and VE	Yes.	
§ 63.6(h)(9)	Adjustment of Opacity Limit	Yes.	
§ 63.6(i)(1)–(i)(14)	Extension of Compliance	Yes.	
§ 63.6(i)(15)		No.	

TABLE 9 TO SUBPART AAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA—Continued

Citation	Summary of requirement	Am I subject to this requirement?	Explanations
§ 63.6(i)(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Exemption from Compliance	Yes.	
§ 63.7(a)(1)–(a)(3)	Performance Testing Requirements.	Yes	§ 63.7110 specifies deadlines; § 63.7112 has additional specific requirements.
§ 63.7(b)	Notification	Yes.	
§ 63.7(c)	Quality Assurance/Test Plan	Yes.	
§ 63.7(d)	Testing Facilities	Yes.	
§ 63.7(e)(1)	Conduct of Tests	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	On and after the relevant compliance date for your source as specified in § 63.7083(e), see § 63.7112(b).
§ 63.7(e)(2)–(4)	Conduct of Tests	Yes.	
§ 63.7(f)	Alternative Test Method	Yes.	
§ 63.7(g)	Data Analysis	Yes.	
§ 63.7(h)	Waiver of Tests	Yes.	
§ 63.8(a)(1)	Monitoring Requirements	Yes	See § 63.7113.
§ 63.8(a)(2)	Monitoring	Yes.	
§ 63.8(a)(3)		No.	
§ 63.8(a)(4)	Monitoring	No	Flares not applicable.
§ 63.8(b)(1)–(3)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)(i)	CMS Operation/Maintenance	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	On and after the relevant compliance date for your source as specified in § 63.7083(e), see § 63.7100 for OM&M requirements.
§ 63.8(c)(1)(ii)	CMS Spare Parts	Yes.	
§ 63.8(c)(1)(iii)	Requirement to Develop SSM Plan for CMS.	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	On and after the relevant compliance date for your source as specified in § 63.7083(e), no longer required.
§ 63.8(c)(2)–(3)	CMS Operation/Maintenance	Yes.	
§ 63.8(c)(4)	CMS Requirements	No	See § 63.7121.
§ 63.8(c)(4)(i)–(ii)	Cycle Time for COM and CEMS	Yes	No CEMS are required under subpart AAAAA; see § 63.7113 for CPMS requirements.
§ 63.8(c)(5)	Minimum COM procedures	Yes	COM not required.
§ 63.8(c)(6)	CMS Requirements	No	See § 63.7113.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes.	
§ 63.8(d)(1)–(2)	Quality Control	Yes	See also § 63.7113.
§ 63.8(d)(3)	Quality Control	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	
§ 63.8(e)	Performance Evaluation for CMS	Yes	See also § 63.7113.
§ 63.8(f)(1)–(f)(5)	Alternative Monitoring Method	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test for CEMS.	No	No CEMS required in subpart AAAAA.
§ 63.8(g)(1)–(g)(5)	Data Reduction; Data That Cannot Be Used.	No	See data reduction requirements in §§ 63.7120 and 63.7121.
§ 63.9(a)	Notification Requirements	Yes	See § 63.7130.
§ 63.9(b)	Initial Notifications	Yes.	
§ 63.9(c)	Request for Compliance Extension.	Yes.	
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes.	
§ 63.9(f)	Notification of VE/Opacity Test	Yes	This requirement only applies to opacity and VE performance tests required in Table 5 to subpart AAAAA. Notification not required for VE/opacity test under Table 7 to subpart AAAAA.
§ 63.9(g)	Additional CMS Notifications	No	Not required for operating parameter monitoring.

TABLE 9 TO SUBPART AAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA—Continued

Citation	Summary of requirement	Am I subject to this requirement?	Explanations
§ 63.9(h)(1)–(h)(3)	Notification of Compliance Status	Yes.	
§ 63.9(h)(4)		No.	
§ 63.9(h)(5)–(h)(6)	Notification of Compliance Status	Yes.	
§ 63.9(i)	Adjustment of Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting General Requirements.	Yes	See §§ 63.7131 through 63.7133.
§ 63.10(b)(1)	Records	Yes.	
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	
§ 63.10(b)(2)(ii)	Recordkeeping of Failures to Meet a Standard.	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	On and after the relevant compliance date for your source as specified in § 63.7083(e), see § 63.7132 for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(b)(2)(iii)	Maintenance Records	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	On and after the relevant compliance date for your source as specified in § 63.7083(e), see § 63.7100 for OM&M requirements.
§ 63.10(b)(2)(vi)–(xii)	Recordkeeping for CMS	Yes.	
§ 63.10(b)(2)(xiii)	Records for Relative Accuracy Test.	No.	
§ 63.10(b)(2)(xiv)	Records for Notification	Yes.	
§ 63.10(b)(3)	Applicability Determinations	Yes.	
§ 63.10(c)	Additional CMS Recordkeeping	No	See § 63.7132.
§ 63.10(d)(1)	General Reporting Requirements	Yes.	
§ 63.10(d)(2)	Performance Test Results	Yes.	
§ 63.10(d)(3)	Opacity or VE Observations	Yes	For the periodic monitoring requirements in Table 7 to subpart AAAAA, report according to § 63.10(d)(3) only if VE observed and subsequent visual opacity test is required.
§ 63.10(d)(4)	Progress Reports	Yes.	
§ 63.10(d)(5)(i)	Periodic Startup, Shutdown, Malfunction Reports.	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	On and after the relevant compliance date for your source as specified in § 63.7083(e), see § 63.7131 for malfunction reporting requirements.
§ 63.10(d)(5)(ii)	Immediate Startup, Shutdown, Malfunction Reports.	Yes before the relevant compliance date for your source as specified in § 63.7083(e). No on and after the relevant compliance date for your source as specified in § 63.7083(e).	
§ 63.10(e)	Additional CMS Reports	No	See specific requirements in subpart AAAAA, see § 63.7131.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Yes.	
§ 63.11(a)–(b)	Control Device and Work Practice Requirements.	No	Flares not applicable.
§ 63.12(a)–(c)	State Authority and Delegations	Yes.	
§ 63.13(a)–(c)	State/Regional Addresses	Yes.	
§ 63.14(a)–(b)	Incorporation by Reference	No.	
§ 63.15(a)–(b)	Availability of Information and Confidentiality.	Yes.	

TABLE 9 TO SUBPART AAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA—Continued

Citation	Summary of requirement	Am I subject to this requirement?	Explanations
§ 63.16	Performance Track Provisions	Yes.	

§ 63.7831 [AMENDED]

■ 30. In § 63.7831(f)(4), add the phrase ''(incorporated by reference, see § 63.14)'' immediately following the words ''September 1997''.

[FR Doc. 2020–12588 Filed 7–23–20; 8:45 am]

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Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, 174, et al.

Hazardous Materials: Liquefied Natural Gas by Rail; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, 174, 179, and 180

[Docket No. PHMSA–2018–0025 (HM–264)]

RIN 2137–AF40

Hazardous Materials: Liquefied Natural Gas by Rail

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA, in coordination with the Federal Railroad Administration (FRA), is amending the Hazardous Materials Regulations (HMR) to allow for the bulk transport of ''Methane, refrigerated liquid,'' commonly known as liquefied natural gas (LNG), in rail tank cars. This rulemaking authorizes the transportation of LNG by rail in DOT–113C120W specification rail tank cars with enhanced outer tank requirements, subject to all applicable requirements and certain additional operational controls. The enhancements to the outer tank are indicated by the new specification suffix ''9'' (DOT–113C120W9).

DATES:

Effective date: This rule is effective August 24, 2020.

Voluntary compliance date: Voluntary compliance is authorized July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Ciccarone, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, or Mark Maday, Federal Railroad Administration, (202) 366–2535, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms

AAR Association of American Railroads
APA Administrative Procedure Act
ASNT American Society of Non-destructive Testing
ASTM American Society of Testing and Materials
AWS American Welding Society
BLET Brotherhood of Locomotive Engineers and Trainmen
BLEVE Boiling Liquid Expanding Vapor Explosion
BNSF Burlington Northern Santa Fe
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
CPUC California Public Utilities Commission
CTMV Cargo Tank Motor Vehicle
DOT Department of Transportation
DOT–SP Department of Transportation Special Permit
DP Distributed Power
EA Environmental Assessment
ECP Electronically Controlled Pneumatic
EIS Environmental Impact Statement
E.O. Executive Order
EOT End of Train
ERG Emergency Response Guidebook
ETS Energy Transport Solutions, LLC
FEMA Federal Emergency Management Agency
FRA Federal Railroad Administration
FRSA Federal Railroad Safety Act
GHG Greenhouse Gas
GRL Gross Rail Load
HHFT High-Hazard Flammable Train
HLRW High Level Radioactive Waste
HMEP Hazardous Materials Emergency Preparedness
HMT Hazardous Materials Table
HMTA Hazardous Materials Transportation Act
HMR Hazardous Materials Regulations
IAFC International Association of Fire Chiefs
IAFF International Association of Fire Fighters
IBR Incorporation by Reference
IFR Interim Final Rule
LNG Liquefied Natural Gas
LPG Liquefied Petroleum Gas
MLI Multi-Layer Insulation
NASFM National Association of State Fire Marshals
NEPA National Environmental Policy Act
NFPA National Fire Protection Association
NGO Non-Governmental Organization
NJDEP New Jersey Department of Environmental Protection
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
NYDEC New York State Department of Environmental Conservation
NYDHSES New York State Division of Homeland Security and Emergency Services
NYDOT New York State Department of Transportation
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
PHMSA Pipeline and Hazardous Materials Safety Administration
PRD Pressure Relief Device
PRV Pressure Relief Valve
PSR Physicians for Social Responsibility
RSI Railway Supply Institute
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RIN Regulatory Identifier Number
RSI–CTC Railway Supply Institute Committee on Tank Cars
SNF Spent Nuclear Fuel
SI Super Insulation
TTD Transportation Trades Department, AFL–CIO
The Center The Center for Biological Diversity
TC Transport Canada
TDG Transportation of Dangerous Goods
UMRA Unfunded Mandates Reform Act
UN United Nations
U.S.C. United States Code
VCE Vapor Cloud Explosion

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I. Overview

In this final rule, PHMSA is authorizing the transportation of LNG by rail tank car, pursuant to Federal Hazardous Materials Transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), because we have determined that bulk rail transport is a safe alternative for this energy product. The final rule authorizes the transportation of LNG by rail in DOT–113 tank cars, which have an established track record of safety in transporting other cryogenic flammable materials. The DOT–113 tank car authorized for LNG service will be enhanced with an outer tank that is thicker and made of steel with a greater puncture resistance to provide an added measure of safety and crashworthiness. Additionally, there will be operational controls in the form of enhanced braking requirements, remote

monitoring, and route analysis, which are intended to exceed current safety requirements for other flammable cryogenic materials.

PHMSA's mission is to protect people and the environment by advancing the safe transportation of energy products and other hazardous materials that are essential to our daily lives. To do this, the agency establishes national policy, sets and enforces standards, conducts research to prevent incidents, and prepares the public and first responders to reduce consequences if an incident does occur. PHMSA and FRA share responsibility for regulating the transportation of hazardous materials by rail and take a system-wide, comprehensive approach that focuses on prevention, mitigation, and response to manage and reduce the risk posed to people and the environment. In line with PHMSA's mission and shared responsibility with FRA for oversight of the rail transport of hazardous materials, PHMSA is issuing this final rule to authorize the transportation of LNG by rail in DOT–113C120W specification rail tank cars with enhanced outer tank material and thickness (those enhancements to be indicated by the specification suffix ''9''), subject to operational controls for braking, monitoring, and route analysis.

This authorization conforms to the intent and purpose of the HMR (49 CFR parts 171–180), which are designed to ensure the safe transportation of all hazardous materials packagings (including tank cars). Collectively, the HMR combine packaging design and maintenance, operational controls, package handling, employee training, hazard communication, emergency response information, and security plan requirements to safeguard transportation. These measures help ensure that hazardous contents safely remain within a package during the course of transportation while also providing for public awareness and appropriate response mechanisms. Supplemental to the HMR, PHMSA oversees a Hazardous Materials Emergency Preparedness (HMEP) grant program that provides funding to the emergency response community for training and planning purposes, furthering appropriate response efforts.

The United States leverages domestic technology improvements to transform American life through increased natural gas production and energy independence. As a result, the United States is today the world's largest natural gas producer through economical production from shale and other unconventional formations.[1] Transportation of natural gas, however, can be constrained by the capacity of existing transportation infrastructure, which negatively affects regions with insufficient access to pipelines or ports. This constraint on capacity, coupled with increased natural gas production in the United States, has resulted in the consideration of using rail transport to help efficiently deliver natural gas to domestic U.S. and international markets.

Authorizing the use of proven DOT–113C120W-specification tank cars to transport LNG will allow the rail industry to play a role in the safe, efficient transport of this important energy product for the 21st century. LNG—referred to as ''Methane, refrigerated liquid'' [2] within the HMR—has been transported safely by trucks on highways and by marine vessels for over 40 years in the United States, and over 50 years internationally. However, the HMR did not authorize the bulk transport of LNG in rail tank cars prior to this rulemaking action, instead permitting rail transport of LNG only on an *ad hoc* basis as authorized by the conditions of a PHMSA special permit (49 CFR 107.105) or in a portable tank secured to a rail car pursuant to the conditions of an FRA approval. The recent expansion in U.S. natural gas production has increased interest in a programmatic approach to using appropriately the nation's rail infrastructure to facilitate efficient transportation of LNG. In response to that interest, PHMSA, in coordination with the FRA, issues this final rule to amend the HMR to permit the bulk transport of LNG in DOT–113C120W specification rail tank cars with enhanced outer tank requirements (those enhancements to be indicated by the specification suffix ''9''), subject to operational controls for braking, monitoring, and routing.

In addition, this final rule satisfies the directive in Executive Order (E.O.) 13868 [84 FR 15495, April 19, 2019] to propose, consistent with applicable law, regulations that ''treat LNG the same as other cryogenic liquids and permit LNG to be transported in approved rail tank cars.'' [3] E.O. 13868 recognizes the leading role that the United States plays in producing natural gas, the importance of improving the United States' capacity to supply natural gas, including LNG, to domestic and international markets, and the need to continue to transport this energy product in a safe and efficient manner. In issuing this final rule, PHMSA furthers the purposes and policies set forth in E.O. 13868 by enabling an additional safe, reliable, and efficient transportation alternative for bringing domestically produced natural gas to existing, and potentially new, markets.

The present action is based on a longstanding understanding of the properties of LNG and an evidence-based approach to the safety of the DOT–113 tank cars designed and used to transport flammable cryogenic materials. At the same time, in promulgating this final rule, and as it does with other hazardous materials, PHMSA recognizes that there is ongoing and potential future research related to the transportation of LNG by all modes. The Agency will continue to use this research to inform potential future regulatory activity, as appropriate.

In the following table, PHMSA provides an overview of: (1) The requirements for LNG transportation in tank cars pursuant to DOT Special Permit 20534 (DOT–SP 20534),[4] issued to Energy Transport Solutions, LLC (ETS) during the Notice of Proposed Rulemaking (NPRM) [5] comment period to authorize ETS's rail transportation of LNG along specific routes; (2) the requirements proposed in the October 24, 2019 NPRM; and (3) the requirements adopted in this final rule. Requirements related to the thermal performance of the DOT–113C120W tank car are unchanged from the NPRM (75 psig maximum start to discharge pressure; maximum pressure when offered; and design service temperature). But this final rule, after consideration of comments received in the docket and to provide additional operational controls and crashworthiness for LNG tank cars, adopts supplemental requirements to those initially proposed in the NPRM: Remote monitoring of pressure and location for LNG tank cars in

[1] CRS, ''An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions,'' 7–5700, Summary, (2015).

[2] Use of this description in quotes and with methane capitalized reflects the proper shipping name as listed in the § 172.101 Hazardous Materials Table.

[3] PHMSA notes that it first announced in the ''Spring 2018 Unified Agenda of Federal Regulatory and Deregulatory Actions'' [83 FR 27085] that it had initiated a ''pre-rule'' action on LNG by Rail, and subsequently announced that it would proceed with an NPRM in the ''Fall 2018 Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions'' [83 FR 57803]. While these actions notified the public of PHMSA's intention to develop propose a regulatory framework for the safe rail transportation of LNG, PHMSA had not published a proposed rulemaking by the time the President issued E.O. 13868 on April 10, 2018.

[4] *https://www.regulations.gov/document?D=PHMSA-2019-0100-3006.*

[5] *Hazardous Materials: Liquefied Natural Gas by Rail NPRM* [84 FR 56964].

transportation; two-way end-of-train (EOT) or distributed power (DP) system for trains transporting 20 or more loaded tank cars of LNG in a continuous block, or 35 or more loaded tank cars of LNG throughout the train; and a requirement that railroads comply with § 172.820 route planning requirements. In addition, to account properly for the properties of LNG, this final rule raises the maximal filling density limit to 37.3% from the proposed 32.5%. Finally, in this final rule PHMSA is also adopting enhanced outer tank requirements compared with the requirements that apply to other DOT–113C120W-specification tank cars, including a thicker 9/16th inch outer tank made from high quality TC–128B normalized steel. Compliance with these enhanced outer tank requirements will be indicated by the new specification suffix ''9'' (DOT–113C120W9).

TABLE 1—SUMMARY OF DOT–SP 20534, NPRM PROPOSALS, AND FINAL RULE COMPONENTS

LNG requirements			
Topics	DOT special permit 20534	NPRM	Final rule
Approval of LNG	Permitted between Wyalusing, PA and Gibbstown, NJ, with no intermediate stops.	Permitted Nationwide	Permitted Nationwide.
Remote Monitoring	Required as a condition of the DOT–SP.	Not Required	Required as a Special Provision for LNG.
Maximum Start to Discharge Pressure.	Not Specified	75 psig	75 psig.
Maximum Pressure when Offered for Transportation.	15 psig	15 psig	15 psig.
Design Service Temperature	Not Specified	Minus 260 °F	Minus 260 °F.
Maximum Permitted Filling Density (percent by weight).	32.5%	32.5%	37.3%.
When is a two-way end-of-train (EOT) or a distributed power (DP) system required.	Required when a train is transporting 20 or more tank cars authorized under this special permit.	Not Proposed	Required when a train is transporting 20 or more loaded tank cars of LNG in a continuous block or 35 or more loaded tank cars of LNG throughout the train.
Route Controls	Authorized only on one route	Not Proposed	Must comply with 172.820.
Minimum Wall Thickness of the Outer Tank Shell and the Outer Tank Heads.	Shell: 7/16″ Tank Head: 1/2″	Shell: 7/16″ Tank Head: 1/2″	Shell and Tank Head: Enhanced 9/16″.
Required Outer Tank Steel Type(s)	As specified in AAR Specifications for Tank Cars, Appendix M.	As specified in AAR Specifications for Tank Cars, Appendix M.	AAR TC 128, Grade B normalized steel plate.

II. NPRM and Background

PHMSA on October 24, 2019, in consultation with the FRA, published the NPRM proposing to authorize the transport of LNG by rail. PHMSA issued the NPRM in response to a petition for rulemaking (P–1697) [6] from the Association of American Railroads (AAR) and a review of existing regulations.

The NPRM proposed a framework for transporting LNG by rail safely by designating an authorized packaging, and by determining how the packaging would be filled safely. PHMSA chose the DOT–113C120W specification tank car packaging designed for flammable cryogenic material. This packaging has been transporting similar flammable cryogenic materials for decades with no fatalities or serious injuries. As for the filling/loading controls, PHMSA proposed a maximum start-to-discharge pressure of 75 psig, a maximum permitted filling density of 32.5 percent by weight, a maximum pressure when offered for transportation of 15 psig, and a design service temperature of minus 260 degrees Fahrenheit. The maximum offering pressure of 15 psig proposed in the NPRM is consistent with the 20-day transportation requirement for cryogenic materials and the allowable average daily pressure rise of 3 psig per day during transportation.

In the NPRM, PHMSA also proposed operational controls consistent with the existing requirements of the HMR, and invited comment on whether existing regulations and the operational controls in AAR's Circular OT–55 entitled ''*Recommended Railroad Operating Practices For Transportation of Hazardous Materials*'' [7] are sufficient. The NPRM also sought comment on the potential need for additional operating controls. Beyond the operational controls already included for other flammable cryogenic materials transported by rail, PHMSA specifically referenced train length and composition, speed restrictions, braking requirements, and routing requirements as potential areas of interest to provide for enhanced operational control requirements. PHMSA also encouraged commenters to provide data on the safety or economic impacts associated with any additional operational controls, including analysis of the safety justification or cost impact of their implementation.

PHMSA also received a request from the Offices of the Attorneys General of New York and Maryland to extend the 60-day comment period for the NPRM an additional 30 days. PHMSA issued a notice [8] on December 23, 2019, extending the comment period until January 13, 2020.

[6] PHMSA–2017–0020–0002.

[7] The freight rail industry developed the first edition of OT–55, which details railroad operating practices for hazardous materials, in the late 1980s, as part of an inter-industry hazardous materials rail safety task force that also included the Chemical Manufacturers Association (now the American Chemistry Council) and the Railway Progress Institute (now the Railway Supply Institute).

[8] *Hazardous Materials: Liquefied Natural Gas by Rail; Extension of Comment Period* [84 FR 70491], *https://www.federalregister.gov/documents/2019/12/23/2019-27656/hazardous-materials-liquefied-natural-gas-by-rail-extension-of-comment-period.*

A. Petition for Rulemaking (P–1697)

1. AAR's Petition for Rulemaking and the NPRM

On January 17, 2017, AAR submitted a petition for rulemaking to PHMSA, entitled ''Petition for Rulemaking to Allow Methane, Refrigerated Liquid to be Transported in Rail Tank Cars'' (P–1697), requesting revisions to the Hazardous Materials Table (HMT; § 172.101) and § 173.319 of the HMR that would permit the transportation of LNG by rail in DOT–113 tank cars. The Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.* requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule. 5 U.S.C. 553(e). PHMSA's rulemaking procedures at § 106.95 allow interested persons to ask PHMSA to add, amend, or repeal a regulation by filing a petition for rulemaking along with information and arguments supporting the requested action. In May 2018, PHMSA accepted P–1697 in accordance with § 106.105 by notifying AAR that the request merited consideration in a future rulemaking.[9]

In its petition, AAR proposed that PHMSA amend the entry for ''United Nations (UN) 1972, Methane, refrigerated liquid'' in the HMT to add a reference to § 173.319 in Column (8C) authorizing transport in rail tank cars. Additionally, AAR proposed that PHMSA amend § 173.319 to include specific requirements for DOT–113 tank cars used for the transportation of LNG, and suggest that the authorized tank car specifications be DOT–113C120W and DOT–113C140W.[10] AAR further proposed amending § 173.319(d)(2) to include maximum filling densities comparable to those specified for cargo tanks containing LNG in § 173.318(f)(3). AAR argued that ''LNG should be authorized for rail transportation because it is a safe method of transporting this commodity, LNG shippers have indicated a desire to use rail to transport it, and because railroads potentially will need to transport LNG for their own use as a locomotive fuel.'' With respect to shipper demand, AAR contended the following:

> The only way to transport LNG is by obtaining special approval from PHMSA for rail transport, or by transporting it via highway; and that notwithstanding the requirement for a special approval, customers have expressed interest in shipping LNG by rail from Pennsylvania to New England, and between the U.S. and Mexico. Authorizing transportation of LNG by rail likely would stimulate more interest. In addition, several railroads are actively exploring LNG as a locomotive fuel. If railroads are to use LNG-powered locomotives, they would need to supply LNG along their networks. Transporting LNG in tank cars would be an optimal, if not essential, way to transport LNG to those locations.

Furthermore, with respect to rail as a safe method of transportation, AAR noted:

> Rail is undeniably safer than over-the-road transportation of LNG, and transport via that mode should be facilitated. The reason the hazardous materials regulations do not currently authorize the transportation of LNG by rail is simply that there was a lack of demand for rail transport of LNG when PHMSA authorized DOT–113 tank cars for the transportation of cryogenic liquids and listed the cryogenic liquids that could be transported in those cars. There was no determination that rail was an unsuitable mode of transporting LNG.

In the NPRM, PHMSA noted that AAR's requested action fits generally into the existing structure of the HMR, which combines packaging design and maintenance, operational controls, package handling, employee training, hazard communication, emergency response information, and security plan requirements to ensure safe transportation of hazardous materials. In the NPRM, PHMSA also requested public comment on the proposals present in AAR's petition, including their potential to reduce regulatory burdens, enhance domestic energy production, and impact safety.

2. The Center for Biological Diversity's Response to P–1697

On May 15, 2017, the Center for Biological Diversity (the Center) submitted a comment to P–1697, recommending that PHMSA deny AAR's petition for rulemaking because of potential environmental impacts of transporting LNG. The Center commented that PHMSA should not proceed in evaluating the petition request until the Agency has conducted a National Environmental Policy Act (NEPA) evaluation, prepared an Environmental Impact Statement (EIS) or Environmental Assessment (EA), and provided opportunity for public review and comment in accordance with Federal hazmat law, as applicable. PHMSA regulations do not require PHMSA to conduct a NEPA evaluation at the time it responds to a petition, and PHMSA has not taken such actions historically as part of its decision whether to accept or deny a petition for rulemaking. As result, PHMSA did not prepare an EA or EIS prior to responding to P–1697. This decision was made with the knowledge that PHMSA would be required to conduct a NEPA analysis as part of a potential rulemaking.

When PHMSA published the NPRM, it prepared a draft EA, *see Section V. J.* ''*Environmental Assessment*'' of the NPRM. A final EA for the rulemaking is included in the rulemaking docket as part of the analysis for the final rule.

B. Regulatory Review

On October 2, 2017, DOT published a notice[11] in the **Federal Register** expressing Department-wide plans to review existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources. As part of this review process, DOT invited the public to provide input on existing rules and other agency actions that have potential for repeal, replacement, suspension, or modification.

The Interested Parties for Hazardous Materials Transportation (Interested Parties) submitted a comment[12] supporting the authorization of LNG for rail tank car transport. Specifically, the Interested Parties noted in its comment that LNG shares similar properties to other flammable cryogenic materials currently authorized by rail tank car and

[9] PHMSA–2017–0020–0005.

[10] The HMR do not authorize the DOT–113C140W specification tank car for hazardous materials transportation. *See* section ''III. A. *Tank Car Specification*'' of the NPRM for further discussion.

[11] *Notification of Regulatory Review,* Docket No. DOT–OST–2017–0069 [82 FR 45750].

[12] Comment from Interested Parties for Hazardous Materials Transportation, Document No. DOT–OST–2017–0069–2591, at: *https://www.regulations.gov/document?D=DOT-OST-2017-0069-2591.* The Interested Parties is a volunteer-run coalition of organizations that share an interest in legislative and regulatory issues related to the safe and secure domestic and international transportation of hazardous materials. Interested Parties members include associations representing hazardous materials shippers, carriers, packaging manufacturers and other related groups, including the Agricultural Retailers Association; American Chemistry Council; American Fuel & Petrochemical Manufacturers; American Trucking Associations; American Pyrotechnics Association; Association of HazMat Shippers; The Chlorine Institute; Compressed Gas Association; Council on the Safe Transportation of Hazardous Articles; Dangerous Goods Advisory Council; The Fertilizer Institute; Gases and Welding Distributors Association; Institute of Makers of Explosives; International Liquid Terminals Association; International Vessel Operators Dangerous Goods Association; Medical Device Battery Transport Council; National Association of Chemical Distributors; National Private Truck Council; National Tank Truck Carriers; Plastics Industry Association; Petroleum Marketers Association of America; Radiopharmaceutical Shippers & Carriers Conference; Railway Supply Institute, Inc.; Reusable Industrial Packaging Association; Sporting Arms Ammunition Manufacturers Institute; The Sulphur Institute; and the Utility Solid Waste Activities Group.

has already been moved in the United States under a special permit. Additionally, they noted that Transport Canada authorizes LNG for transportation by rail in DOT–113-equivalent rail cars and that there is increased commercial demand for rail transport of LNG within the United States and between the United States and Mexico.

After consideration of the issues, PHMSA is acting on the comment from the Interested Parties by amending the HMR to allow for bulk transport of LNG by rail in a DOT–113 specification tank car. Additionally, this action supports the objectives of the Notification of Regulatory Review because it is expected to ''promote [the] clean and safe development of our Nation's vast energy resources, while avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.''

C. DOT Special Permit 20534

On August 21, 2017, PHMSA received an application for a special permit from ETS to authorize the transportation in commerce of ''Methane, refrigerated liquid'' in DOT–113C120W tank cars.

Upon completion of its preliminary evaluation of the application, PHMSA published for public comment a Notice of Draft Environmental Assessment for a Special Permit Request for Liquefied Natural Gas by Rail in the **Federal Register** on June 6, 2019.[13] The notice requested comment on potential safety, environmental, and any additional impacts that should be considered as part of the special permit evaluation process. The docket for the draft Environmental Assessment enclosed a draft special permit. The notice was initially published with a 30-day comment period and was extended an additional 30 days after requests from numerous stakeholders, including non-governmental organizations (NGOs) and private individuals. The extended comment period closed on August 7, 2019 and PHMSA received 2,994 comments.

On December 5, 2019, PHMSA granted DOT–SP 20534 to ETS authorizing the transportation of LNG in DOT–113C120W tank cars between Wyalusing, Pennsylvania, and Gibbstown, New Jersey, with no intermediate stops, and subject to certain operational controls. Some of the operational controls required by the special permit had not been proposed in the draft special permit; PHMSA introduced those additional operational controls in response to comments received and additional documentation provided by the applicant, as well as to further reduce risk by supplementing the robust safety regime established by the HMR. Those information requests also were intended to increase PHMSA and FRA's knowledge of ETS's operations to inform later decisions on DOT–SP 20534 and the HMR. Specifically, PHMSA added the following requirements to the special permit:

(1) Each tank car must be operated in accordance with § 173.319 except for the identified maximum permitting filling density, maximum operating pressure, and remote sensing equipment as specified in the special permit;

(2) Shipments are authorized between Wyalusing, Pennsylvania, and Gibbstown, New Jersey, with no intermediate stops.

(3) Within 90 days after issuance, the grantee shall prepare and submit a plan providing per shipment quantities, timelines, and other actions to be taken for moving from single car shipments to multi-car shipments, and subsequently to unit trains (20 or more tank cars).

(4) Trains transporting 20 or more tank cars authorized under this special permit must be equipped and operated with a two-way end of train device as defined in 49 CFR 232.5 or distributed power as defined in 49 CFR 229.5.

(5) Prior to the initial shipment of a tank car under this special permit, the grantee must provide training to emergency response agencies that could be affected between the authorized origin and destination. The training shall conform to NFPA–472, a voluntary consensus standard developed by the National Fire Protection Association (NFPA) establishing minimum competencies for responding to hazardous materials emergencies, including known hazards in emergencies involving the release of LNG, and emergency response methods to address an incident involving a train transporting LNG.

(6) While in transportation, the grantee must remotely monitor each tank car for pressure, location, and leaks.

Following issuance of DOT–SP 20534, PHMSA published a notice[14] in the **Federal Register** that PHMSA had added DOT–SP 20534 and documents supporting the special permit decision—the Special Permit Evaluation Form and Final Environmental Assessment—to the docket for the HM–264 NPRM (Docket No. PHMSA–2018–0025) for consideration by the public because of the overlapping subject matter. PHMSA invited comments on DOT–SP 20534 operational controls to be submitted to the HM–264 rulemaking docket by December 23, 2019.[15] PHMSA noted it would consider any additional comments on the operational controls included in DOT–SP 20534, which was posted to the HM–264 rulemaking docket to aid in determining appropriate operational controls for this final rule. PHMSA encouraged commenters to provide data on the safety or economic impacts associated with operational controls in the special permit, including analysis of the safety benefits and the potential cost-benefit impact of implementing those or other operational controls.

III. Amendments to the HMR Adopted in This Final Rule

In this final rule, PHMSA is authorizing LNG, a well characterized and understood material, for transportation in a specific rail car packaging that has a long, safe record carrying similar cryogenic materials, including flammable materials. Additionally, to provide an additional level of safety and in response to comments, PHMSA is adopting certain supplemental packaging integrity enhancements and operational controls.

A. Existing HMR Requirements for Rail Transport of Flammable Cryogenic Material

Federal hazmat law, 49 U.S.C. 5103, requires PHMSA[16] to designate material or a group or class of material as hazardous when it determines that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property, and to prescribe regulations for the safe transportation of hazardous material in commerce. Transportation includes the movement of that hazardous material and any loading, unloading, or storage incidental to the movement.[17] These statutory provisions are implemented within PHMSA regulations at 49 CFR parts 171 to 180 (*i.e.,* the HMR).

The HMR prescribe a comprehensive suite of requirements for hazardous material classification, hazard communication, emergency response

[13] *Hazardous Materials Safety: Notice of Availability of the Draft Environmental Assessment for a Special Permit Request for Liquefied Natural Gas by Rail* [84 FR 26507].

[14] *Hazardous Materials: Notice of Issuance of Special Permit Regarding Liquefied Natural Gas* [84 FR 67768].

[15] On December 23, 2019, PHMSA extended the comment period to January 13, 2020 [84 FR 70491].

[16] The authority was delegated by the Secretary of Transportation in 49 CFR 1.97.

[17] 49 U.S.C. 5102(13).

information, training, packaging, and material handling. These requirements are designed to prevent the release of hazardous materials in transportation, and in the event of a release, to provide emergency responders and the public with necessary information to protect themselves and mitigate the consequences of the release to the greatest extent possible. The HMR are a proven hazardous material regulatory system well suited to manage the risks of LNG transportation in rail tank cars. The robust requirements already in place in the HMR for packaging, rail car handling, hazard communication and training address many of the safety concerns related to the transportation of LNG by rail. Moreover, PHMSA works closely with other Federal and State partners to enforce the requirements of the HMR.

1. Packaging

Selecting proper packaging for a hazardous material is a critical step in the HMR safety system. Hazardous materials packaging must be chemically and physically compatible with the material contained in the package, also known as the lading. The packaging must be able to withstand all conditions normally encountered during transportation, which include humidity and pressure changes, shocks, and vibrations. The HMR authorize many types of packagings for hazardous materials, ranging in size from 1 milliliter glass sample tubes, to 30,000-gallon railroad tank cars. Different modes of transportation (highway, air, rail, and vessel) and varying volumes of hazardous materials present different challenges, and require a variety of packaging designs to account for different conditions encountered in transportation. Tank cars used for rail transportation must be designed to withstand exposure to weather, in-train forces and switching, vibrations, dynamic forces, and exposure to the lading they transport.

Cryogenic materials pose unique challenges for selecting appropriate transportation packaging. The lading's extreme cold properties render most types of packaging material too brittle to maintain containment during transportation. Therefore, all cryogenic packagings in the HMR are required to be constructed from specific steel alloys with physical properties that enable them to retain their strength and ductility at the lading's extreme low temperatures.

Another challenge that must be considered is ensuring that the lading remains at these cold temperatures during transportation. Temperature maintenance of the lading prevents expansion and overpressure conditions, or possible activation of the transportation vessel's pressure relief device. To help ensure that neither scenario occurs during transportation, all bulk packagings authorized in the HMR for transportation of flammable cryogenic materials (*e.g.,* DOT–113 tank cars, MC–338 cargo tanks, and UN T75 portable tanks) are built as a ''tank-within-a-tank'' design. The inner tank contains the cryogenic material. The space between the inner and outer tanks is evacuated to a high degree of vacuum (absolute pressure less than 75 microns of mercury or 0.0001 atmospheres). The outer surface of the inner tank is wrapped with a high-grade insulation consisting of multiple layers of a thin reflecting material such as an aluminum foil sandwiched between a thin non-conducting paper type material. Alternately, the physical insulation may also be made of fine grained perlite particles filling the void space between the inner and outer tanks. The combined effect of vacuum in the annular space between the inner and outer tanks together with the physical insulation substantially reduces the heat transfer from the atmosphere to the lading, thus effectively maintaining the lading temperature within safe limits during transportation. Furthermore, the outer tank shields the inner tank from physical damage, exposure to the elements, and in-train forces, while providing structural support to the packaging.

Tank car design is a mature field, and the requirements for designing and building a tank car able to withstand the conditions encountered during transportation are codified in part 179 of the HMR. An industry publication, AAR Manual of Standards and Recommended Practices, Section C—III, Specifications for Tank Cars, Specification M–1002 (AAR Specifications for Tank Cars), is incorporated by reference into the HMR. HMR tank specifications and standards are aligned with authoritative design and construction standards found in the ASME Boiler & Pressure Vessel Code (BPVC), Section VIII, Division 1 *Rules for Construction of Pressure Vessels,* and welding requirements found in ASME BPVC Section IX, *Welding and Brazing Qualifications.* The inner and outer tanks are designed to ASME BPVC Section VIII Division 1 using the design margins and loading conditions for pressure vessels. The ASME BPVC Section VIII Division 1 design margin and loading conditions determine the design thickness of both the inner and outer tanks. However, the HMR prescribe minimum thicknesses requirements for both tanks. American Welding Society (AWS) standards are used during manufacturing to ensure that the welding performed has quality control systems and is performed by qualified personnel. The DOT–113 tank car requirements in the HMR incorporate elements of rigorous engineering standards, including the ASME BPVC as well as the AAR Specifications for Tank Cars, M–1002. M–1002 in turn draws on well-established industry standards of the AWS, ASTM, American Society of Non-destructive Testing (ASNT) as well as ASME, for design, materials, fabrication, testing and inspection requirements. The ASME BPVC, Section VIII, Division 1, has become the international benchmark standard for pressure vessel design for a multitude of industries, including transportation. These standards impose criteria for forming, fabricating, inspecting, and testing pressure vessels and their components and for qualifying welders, welding operators, and welding procedures to ensure the soundness of pressure vessels. Starting from these rigorous design principles, the specification requirements in part 179 of the HMR add design requirements to address conditions encountered in transportation and not necessarily applicable to stationary storage. For example, the HMR require the use of specific steels that balance toughness, strength, and weldability with being able to withstand extremely low temperatures.

Like other bulk packagings, cryogenic packagings authorized in the HMR, including DOT–113 tank cars, have requirements for safety relief devices, also referred to as pressure relief devices (PRDs). PRDs are designed to vent the contents of the tank in a controlled manner to prevent the inner tank from suffering a catastrophic failure or explosion due to pressure-increasing events, such as exposure to fire. DOT–113 tank cars have two different PRDs: (1) A pair of reclosing pressure relief valves (PRVs), which operate on a temporary basis to relieve inner tank pressure and bring it back to safe levels; and (2) a pair of non-reclosing safety vents (rupture disk) that open at a pressure higher than the start to discharge pressure of the PRVs and remain open once the disk ruptures. The latter devices are a failsafe in the event the primary PRVs fail to perform as intended.

The HMR explicitly authorize LNG for transportation in UN T75 insulated portable tanks that are loaded onto railroad flat cars and MC–338 cargo

tanks, which are both tank-within-a-tank designs. Both bulk packagings have an established safety record for LNG and other flammable cryogenic materials over many years of transportation, demonstrating the high level of safety provided by the tank-within-a-tank design. On May 4, 1963, the Interstate Commerce Commission Safety and Service Board published final rule Order 57 [28 FR 4495], which authorized the transportation of liquefied hydrogen in a DOT–113 tank car. The DOT–113 specification itself was adopted into the HMR on December 1, 1962 in final rule Order 56 [27 FR 11849]. Prior to adoption, the DOT–113 design had been authorized to transport liquefied hydrogen by special permits, documents issued by PHMSA and its predecessor agencies that permit a variance from the requirements of the HMR provided an equivalent level of safety is maintained. PHMSA and its predecessor agencies have used special permits to evaluate new transportation technologies and practices prior to authorizing them for broader use. Liquefied ethylene, a flammable cryogenic material with physical properties (including flammability range and cryogenic state) similar to LNG, has been authorized for transportation in DOT–113C120W tank cars since the publication of final rule HM–115, *Cryogenic Liquids* [48 FR 27674, June 16, 1983]. The DOT–113C120W tank car was authorized by special permit prior to adoption in the HMR.

It is essential to ensure that cryogenic lading remains below a maximum temperature during transportation. The HMR address this currently by requiring tank car owners to ensure the thermal integrity of DOT–113 packages through measurement of thermal performance throughout the life of the tank. Specifically, the HMR prohibit the transportation of a DOT–113 if the average daily pressure rise in the tank exceeded 3 psig during the prior shipment. The insulation located in the annular space between the outer and inner tanks can lose its effectiveness over time due to conditions encountered during transportation, through settling of the insulation or through the development of micro vacuum leaks. New multi-layer insulation systems do not suffer settling problems, but are still susceptible to the degradation of vacuum and therefore must be monitored in the same way as older insulation systems. As the effectiveness of the insulation system lessens, more thermal energy can be transmitted to the inner tank and the lading. The rate of thermal energy transfer can be determined by measuring the pressure the lading exerts on the inner tank at the time the material is offered, and after the material arrives at its destination. If the average daily pressure rise during transportation exceeds 3 psig, the thermal integrity of the tank must be tested. This testing involves measuring either pressure rise or calculated heat transfer over a 24-hour period. When the pressure rise test is performed, the absolute pressure in the annular space of the loaded tank car may not exceed 75 microns of mercury at the beginning of the test and may not increase more than 25 microns during the 24-hour period. If the tank fails the thermal integrity test, it must be removed from hazardous material transportation service until it has been repaired and passes the required thermal integrity tests. This system of thermal integrity management has proven to be an effective way of preventing unsafe pressure increases during transportation for the existing DOT–113 fleet, and PHMSA expects that it will continue to be effective for DOT–113s used in LNG service.

The flammability and low-temperature hazards presented by LNG in transportation are well understood. The DOT–113C120W tank car has a well-established safety record transporting similar cryogenic flammable materials. The construction specifications for the steel used for fabricating the inner tank of the DOT–113C120W tank car requires it to withstand a (design) service temperature of −260 °F, which is also the temperature of LNG at atmospheric pressure (*i.e.,* LNG is not cooled below this temperature). The austenitic steel required for the inner tank retains all necessary strength and ductility at −260 °F, and is suitable for use to −423 °F the shipping temperature of liquefied hydrogen, a far lower temperature than it would be exposed to in LNG service.

2. Hazard Communication

Once the lading has been properly packaged, the HMR prescribe an extensive system of multi-layered hazard communication tools designed to provide information on the type and location of hazardous materials present to transportation employees, emergency responders, and the public. The discussion below will focus on hazard communication requirements specific to rail transportation, but similar requirements exist for highway, vessel, and air transport, with variations to account for specific challenges applicable to each mode of transportation.

The HMR require that a tank car containing a hazardous material conspicuously display placards on each side and each end of the car. The diamond-shaped placards are designed to be instantly recognizable to any trained emergency responder or transportation employee. Placards allow for quick identification of the DOT hazard class or division of the material being transported by their color, symbol, and the numeral entered in the bottom corner of the placard. Specifically, for DOT–113 tank cars transporting flammable gases such as LNG, the placard must also be placed on a white square background to increase the contrast and visibility of the placard in accordance with § 172.510(a)(3), and as a visual signal of the special handling procedures for DOT–113 tank cars transporting flammable gases. Tank cars must additionally be marked on each side and each end with the UN ID number of the hazardous material being carried. This marking is typically displayed on a white rectangle in the center of the placard. Moreover, tank cars loaded with flammable gases, like LNG, are required to be marked on two sides with the key words of the proper shipping name, or the common name of the material being transported. Therefore, a tank car transporting LNG will be marked with the words ''Methane, refrigerated liquid'' or ''Natural gas, refrigerated liquid'' on two sides of the tank car.

The train crew is required to maintain a document which identifies the position in the train of each rail car containing a hazardous material. The crew is also required to maintain emergency response information for each hazardous material carried in the train. This emergency response information must include specific information related to the material being transported, including:

- Immediate hazards to health;
- Risks of fire or explosion;
- Immediate precautions to be taken in the event of an accident or incident;
- Immediate methods for handling fires;
- Initial methods for handling spills or leaks in the absence of fire; and
- Preliminary first aid measures.

As one method of compliance with these requirements, train crews often carry the DOT Emergency Response Guidebook (ERG),[18] a joint publication of PHMSA, Transport Canada, the Secretariat of Communication and Transport of Mexico, and interested parties from government and industry,

[18] *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/ERG2016.pdf.*

to supplement emergency response information provided by the person shipping the hazardous material. The ERG is intended for use by emergency services personnel to provide guidance for initial response to hazardous materials transportation incidents. The ERG cross-references specific materials with incident response information, including firefighting instructions and evacuation distances. The ERG is made widely available, as PHMSA provides millions of free copies of the ERG to emergency responders in every State, and several commercial publishers have copies available for purchase. Smartphone applications of the ERG are also available. The ERG includes instruction to handle incidents involving flammable cryogenic materials such as LNG.

Finally, the document carried by the train crew is required to display clearly the emergency response telephone number for each hazardous material transported in the train. The phone number must be easily recognizable to the train crew, or any other person using the train document in an emergency. The telephone number must be of a person who either: (1) Is knowledgeable of the hazardous material being shipped, and has comprehensive emergency response and incident mitigation information for that material; or (2) has immediate access to a person who possesses such knowledge and information. The emergency response telephone number must be monitored at all times the material is in transportation. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet this requirement. The emergency response telephone number may be monitored by the person offering the hazardous material, or an agency or organization capable of, and accepting responsibility for, providing the comprehensive emergency response and incident mitigation information.

The railroad industry has also developed its own electronic hazard communication aids, beyond the requirements of the HMR. Specifically, the AAR, in conjunction with its members and Railinc (an AAR technology subsidiary), has developed and deployed an application called AskRail.[19] The AskRail app links to the freight railroad industry's train and railcar information database maintained by Railinc. AskRail provides an emergency responder who has registered to use the service with detailed information about the type and location of all cars carrying hazardous materials in a train including emergency response guidance.

This existing system of hazard communication under the HMR, supplemented by industry efforts such as AskRail, accurately communicates the hazards presented by hazardous materials to emergency responders, transportation employees, and the public and contributes to proper emergency response when accidents occur in transportation.

3. Training

The HMR requirements for safe transportation of hazardous materials also encompass training for all hazmat employees involved in the transportation of hazardous material. *See* part 172 subpart H. Training is the cornerstone of compliance with the HMR, because only properly trained employees can ensure the applicable HMR requirements are followed appropriately. All hazmat employees must be trained and tested by their employer to perform their HMR-related functions correctly and safely. This includes employees who prepare a hazardous material package for transportation, transport hazardous materials (*e.g.,* the train crew), or unload hazardous material. *See* § 171.8. In accordance with § 172.704, training must cover:

○ General awareness of HMR requirements;

○ Function-specific training applicable to the particular functions performed by the employee (*e.g.,* proper loading procedures for flammable cryogenic material);

○ Safety;

○ Security awareness; and

○ In-depth security training, when applicable.

Training must be documented in accordance with § 172.704(d), and repeated at least every 3 years.

4. Security Plans

The HMR also address security requirements for certain high-risk hazardous materials. Offerors and carriers of materials listed in § 172.800 must develop and adhere to a transportation security plan for hazardous materials. Security plans are required of any offeror or carrier of flammable gas in a quantity over 792 gallons, which is far below the volume of a single tank car of LNG or similar flammable cryogenic material. Security plans must include an assessment of transportation security risks for shipments of the hazardous materials, including site-specific or location-specific risks associated with facilities at which the hazardous materials listed in § 172.800 are prepared for transportation, stored, or unloaded incidental to movement, and appropriate measures to address the assessed risks. Specifically, security plans must address three elements:

○ *Personnel security.* Measures to confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials covered by the security plan.

○ *Unauthorized access.* Measures to address the assessed risk that unauthorized persons may gain access to the hazardous materials covered by the security plan or transport conveyances being prepared for transportation of the hazardous materials covered by the security plan.

○ *En route security.* Measures to address the assessed security risks of shipments of hazardous materials covered by the security plan en route from origin to destination, including shipments stored incidental to movement.

Properly implemented security plans decrease the risk that a shipment of hazardous material, including LNG, can be used in an attack against persons or critical infrastructure within the United States.

5. Preparing a Packaging for Transportation

Hazardous materials packages must be prepared and filled in such a way to ensure that there can be no detectable release of hazardous materials to the environment during conditions normally incident to transportation. Specifically, for LNG, there are several existing requirements in the HMR that address the proper filling of a DOT–113 tank car to ensure safe transportation of the commodity. These package preparation requirements include:

- As provided in § 173.31, when the car is offered into transportation, the offeror must inspect the tank car and all closures prior to movement (*i.e.,* the pre-trip inspection); and
- Filling density restrictions and loading pressure restrictions in § 173.319 for cryogenic material.

The filling and loading restrictions in § 173.319 are based on the physical properties of each flammable cryogenic material and are designed to ensure that during transportation, the inner tank will not experience a pressure rise that triggers the PRVs to activate.

6. Route Planning

The HMR address requirements for rail route planning in § 172.820. Trains

[19] *https://public.railinc.com/products-services/askrail.*

meeting the following criteria are required to assess the safety and security risks along transportation routes (§ 172.820(c)) and perform an alternative route analysis (§ 172.820(d)):

(1) More than 2,268 kg (5,000 lbs.) in a single carload of a Division 1.1, 1.2 or 1.3 explosive;

(2) A quantity of a material poisonous by inhalation in a single bulk packaging;

(3) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this subchapter; or

(4) A high-hazard flammable train (HHFT) as defined in § 171.8 of this subchapter.

Historically, there has been considerable public and Congressional interest in the safe and secure rail routing of security-sensitive hazardous materials (such as chlorine and anhydrous ammonia). The Implementing Recommendations of the 9/11 Commission Act of 2007 [20] directed the Secretary, in consultation with the Secretary of Homeland Security, to publish a rule governing the rail routing of security-sensitive hazardous materials. On December 21, 2006, PHMSA, in coordination with FRA and the Transportation Security Administration (TSA) of the U.S. Department of Homeland Security (DHS), published an NPRM under Docket HM–232E (71 FR 76834), which proposed to revise the current requirements in the HMR applicable to the safe and secure transportation of hazardous materials by rail. Specifically, the HM–232E NPRM proposed to require rail carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments.

In the HM–232E NPRM, PHMSA solicited comments on whether the proposed requirements should also apply to flammable gases, flammable liquids, or other materials that could be weaponized, as well as hazardous materials that could cause serious environmental damage if released into rivers or lakes. Commenters who addressed this issue indicated that rail shipments of Division 1.1, 1.2, and 1.3 explosives; PIH materials; and highway-route controlled quantities of radioactive materials pose significant rail safety and security risks warranting the enhanced security measures proposed. Commenters generally did not support enhanced security measures for a broader list of materials than were proposed in the NPRM.

PHMSA adopted the NPRM's proposed security measures in an April 16, 2008 Interim Final Rule (IFR) (73 FR 20752) which was subsequently amended by a November 26, 2008 final rule (73 FR 72182). The 2008 IFR and final rule imposed a series of rail routing requirements in § 172.820. Carriers must compile annual data on certain shipments of explosive, PIH, and radioactive materials; use the data to analyze safety and security risks along rail routes where those materials are transported; assess alternative routing options; and make routing decisions based on those assessments. In accordance with § 172.820(e), the carrier must select the route posing the least overall safety and security risk. The carrier must retain in writing all route review and selection decision documentation. Additionally, the rail carrier must identify a point of contact on routing issues involving the movement of covered materials and provide that contact information to the appropriate State, local, and tribal personnel.

PHMSA proposed in the August 1, 2014 NPRM, in § 174.310(a)(1), to modify the rail routing requirements specified in § 172.820 to apply to any HHFT. The routing requirements discussed in the NPRM reflect the practices recommended by the NTSB in recommendation R–14–4,[21] and are in widespread use across the rail industry for security-sensitive hazardous materials. An overwhelming majority of commenters expressed support for additional routing requirements for HHFTs and thus, PHMSA finalized the proposed requirements.[22]

In this final rule, PHMSA makes any railroad that transports a quantity of LNG in a tank car subject to the route planning requirements in § 172.820.

7. Operational Controls

In addition to requirements for packaging, hazard communication, training, and security plans that must be met before the hazardous material is offered for transportation, the HMR contain operational controls requirements for the safe transportation of hazardous materials in tank cars. These requirements include specific provisions for handling flammable cryogenic materials similar to LNG, including loading and unloading requirements for tank cars in §§ 173.31 and 174.67, which help prevent movement of tank cars during loading/unloading operations, help prevent other rail equipment from approaching tank cars during loading/unloading through use of derails, bumpers, or lining switches to prevent entry, and include specific instructions that tank car unloading personnel are required to follow, such as attendance of the unloading operation and care of tools used for unloading.

Other operational controls include an unloading requirement in § 174.204 that requires that tank cars containing a flammable cryogenic material must be unloaded directly from the car to permanent storage tanks of sufficient capacity to receive the entire contents of the car. Finally, switching restrictions in § 174.83(b) prohibit a DOT–113 specification tank car displaying a Division 2.1 (flammable gas) placard, including a DOT–113 specification tank car containing a residue of a Division 2.1 material (*e.g.,* LNG), from being cut off while in motion, coupled into with more force than is necessary to complete the coupling, or struck by any car moving under its own momentum. These special handling requirements protect DOT–113 tank cars from experiencing unnecessary impact forces during switching. Compliance with these switching restrictions is highlighted by the special white background for the flammable gas placard required by § 172.510 for DOT–113, and a marking requirement for the tank car which indicates that the cars may not be humped or cut off while in motion (*see* § 179.400–25).

Additionally, three operational controls currently address the expedited movement of a tank car transporting hazardous materials, delivery of tank cars containing gases and cryogenic material, and notification of delays in transit. First, § 174.14 requires that a carrier must forward each shipment of hazardous materials promptly and within 48 hours (Saturdays, Sundays, and holidays excluded), after acceptance at the originating point or receipt at any yard, transfer station, or interchange point, except that where biweekly or weekly service only is performed, a shipment of hazardous materials must be forwarded on the first available train. Furthermore, § 174.14(b) states that a tank car loaded with any Division 2.1 material (which would include LNG), may not be received and held at any point, subject to forwarding orders, to defeat the purpose of this requirement for the expedited movement of a hazardous material, or to

[20] *https://www.congress.gov/110/plaws/publ53/PLAW-110publ53.pdf.*

[21] *https://www.ntsb.gov/publications/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-14-004.*

[22] 80 FR 26644.

defeat the requirements of § 174.204 for tank car delivery of gases such as cryogenic liquids. Section 174.204 prohibits tank cars containing Class 2 materials from being unloaded unless the shipment is consigned for delivery to an unloading facility on private tracks, and prohibits the storage of Division 2.1 (flammable) cryogenic material. If a tank car containing Class 2 material cannot be delivered to a private track for unloading, the regulation does allow the car to be unloaded on a rail carriers tracks provided the lading is piped directly from the tank car to permanent storage tanks. Finally, in accordance with § 173.319, the shipper must notify FRA whenever a tank car containing any flammable cryogenic material is not received by the consignee within 20 days from the date of shipment.

8. Risk Based Framework

The HMR address the risks inherent in the transportation of hazardous materials through comprehensive packaging, hazard communication, training, security planning, and material- and mode-specific operational controls.

The HMR regulate 435 million shipments of hazardous materials every year and by all modes of transportation, with an average of 20 hazardous material incidents resulting in death and serious injury each year, most of which occur in the highway mode. The existing HMR requirements are robust and will adequately address the risks posed by transportation of LNG in DOT–113C120W tank cars. However, in this final rule, PHMSA is adopting certain additional safety measures designed to further reduce those risks. These safety measures are discussed in detail in the following section.

B. The DOT–113C120W Specification Tank Car

PHMSA considers the existing DOT–113C120W tank car a suitable packaging for transportation of LNG by rail. The inner tank is capable of withstanding the cryogenic temperatures and chemical properties of LNG, and the thermal protection system is capable of maintaining LNG at a safe pressure and temperature throughout transportation. However, in this final rule, to improve crashworthiness and in response to comments received, PHMSA requires that DOT–113C120W tank cars used for LNG transportation must be constructed with a thicker outer tank, and that the outer tank be constructed of a higher quality steel currently required for construction of DOT–117A and PIH/TIH tank car tanks. PHMSA has determined that the thicker outer tank in DOT–117A and PIH/TIH tank cars improved crashworthiness. The DOT–117A crashworthiness improvement results are discussed below. Additionally, PHMSA is adopting the proposals for maximum offering pressure as proposed in the NPRM, but is amending the maximum filling density to 37.3%.

1. Suitability of the DOT–113C120W Tank Car for LNG

The DOT–113C120W tank car has a long history of safe transportation of flammable cryogenic material similar to LNG. The safe history of DOT–113C120W tank cars used for the transportation of other cryogenic materials such as ethylene since 1983 (and earlier under special permits) is a key factor in determining that this tank car design is appropriate for the transportation of LNG. Please see our discussion of the history of the DOT–113 specification in ''*Section III.A. Existing HMR Requirements for Rail Transport of Flammable Cryogenic Gas*'' for further details.

DOT–113C120W rail tank cars are vacuum-insulated tank-within-a-tank designs (similar to a thermos bottle) consisting of an inner alloy stainless steel tank enclosed within a carbon steel outer tank specifically designed for the transportation of cryogenic material, such as liquid hydrogen, oxygen, ethylene, nitrogen, and argon. Additionally, the design and use of the DOT–113 specification tank car includes added safety features—such as protection systems for piping between the inner and outer tanks, multiple PRDs (pressure relief valves and vents), and insulation—that contribute to an excellent safety record throughout its 50 years of service. The HMR currently authorize the DOT–113C120W specification tank car, the same specification being authorized for LNG in this rule, for another flammable cryogenic material, ethylene, which has chemical properties similar to those of LNG.

The DOT–113 tank car requirements in the HMR incorporate elements of rigorous engineering standards, including the ASME BPVC as well as the AAR Specifications for Tank Cars, M–1002. M–1002 in turn draws on well-established industry standards of the American Society for Testing and Materials (ASTM), American Society of Non-destructive Testing (ASNT), as well as ASME, for design, materials, fabrication, testing and inspection requirements. The ASME BPVC, Section VIII, Division 1, is the international benchmark standard for pressure vessel design for a multitude of industries, including transportation. Starting from these rigorous design principles, the specification requirements in part 179 of the HMR add design requirements to address conditions encountered in transportation and not necessarily applicable to stationary storage. For example, the HMR require the use of specific steels that balance toughness, strength, and weldability with being able to withstand extremely low temperatures.

When cryogenic ethylene is transported in DOT–113C120W specification tank cars, it is offered at cryogenic service temperature (defined in § 173.115(g) as colder than −90 °C), as LNG would be in this final rule. The delimiter letter ''C''—as used in ''DOT–113C120W''—indicates the car is designed for a loading and shipping temperature as low as −260 °F (−162 °C) (*see* the specification requirements in § 179.401–1 for DOT–113C120W tank cars). Negative 260 °F corresponds to the temperature at which LNG converts from a gas to a liquid. The HMR do not permit the filling of a tank car below its service temperature (*see* § 173.319(a)(4)(ii)). However, should the inner tank experience colder temperatures, the 300-grade austenitic stainless steels, 304/304L, permitted for the inner tank, are authorized to withstand the much lower service temperature of cryogenic hydrogen, 423 °F.

Similarly, the standard heat transfer rate assigned to the DOT–113C120W tank car in § 179.401–1, a maximum of 0.4121 Btu per day per pound of water capacity, is consistent with the requirements for the other bulk packages authorized for LNG in the HMR (MC 338 cargo tanks and UN T75 portable tanks), and packages authorized by DOT Special Permits. The specific design properties of the DOT–113C120W, including service temperature and thermal performance, make it an appropriate packaging for safe transportation of LNG, in the same way that the packaging is currently used to transport cryogenic ethylene.

2. Materials of Construction for DOT–113 Tank Cars

In the United States, storage vessels for LNG are designed and constructed in accordance with ASME BPVC Section VIII *Rules for Construction of Pressure Vessels,* Division 1. To maintain the low temperature, LNG storage tanks are usually made with an inner and outer tank with insulating material between and a vacuum applied to the annular space.

a. Inner Tank

ASTM A240/240M 300-grade austenitic stainless steels, 304/304L, are the only steels authorized in the HMR for constructing the inner tank of a DOT–113 tank car. The major elements in these steels are: Carbon—0.08% (0.03%); manganese—2.00% (both); chromium—18.0–20.00% (both); nickel—8.00–11.00% (8.00–12.00%); and the remainder iron. The role of chromium and nickel in the 304/304L grade steels is to: (1) Retain the Face Centered Cubic (FCC) atomic structure which gives 304/304L its strength, ductility and toughness down to cryogenic temperatures and (2) provide a corrosion resistant passive layer. The tensile strength of 304/304L steel is 70,000–75,000 psi with Charpy V-notch toughness (resistance to brittle failure) values in the range of 80–130 ft. lbs. at −320 °F (minimum Charpy V-notch failure value is 60 ft. lbs.), below the temperature range encountered during LNG transportation. The service environment of a railroad tank car is dynamic and severe and can result in the accumulation of impact and fatigue damage. Austenitic stainless steels, which are readily weldable using qualified welders and welding procedures, are therefore well-suited for use in the construction and repair of tank cars.

For storage tanks, ASME design criteria allow for the use of 300-grade stainless steels or ASTM A553 *Standard Specification for Pressure Vessel Plates, Alloy Steel, Quenched and Tempered 7, 8, and 9% Nickel.* Both the 304/304L and A553 steels have similar nickel content limits, but utilize the nickel to achieve strength and toughness in different ways. The A553 steel is a heat treatable, ''quench and tempered'' type of steel with the nickel helping to form martensite, a strong but brittle metallurgical product. The quench and tempering treatment makes welding A553 difficult, requiring expertise in welding procedure development and operator skill which adds risk to its use for tank cars. By contrast, the nickel content in 304/304L stainless steels facilitates the formation of austenite, a strong, tough and ductile form of steel, which maintains its physical properties at cryogenic temperatures. This, coupled with its excellent weldability, make it the clear choice for cryogenic tank cars.

The inner tank has a minimum thickness requirement of 3/16th inch (after forming) unless increased through a calculated formula in 179.400–8, which increases thickness based on inner diameter of the tank. The calculations used to determine the thickness of the inner tank are aligned with the ASME BPVC Section VIII Division 1 and align with all other tanks used for cryogenic materials. Typically, DOT–113 inner tanks exceed the minimum value of 3/16th inch thickness to conform to ASME calculations and to avoid localized thinning arising from manufacturing processes and the variation in the thickness of steel sourced from steel mills. Therefore, in this final rule, PHMSA maintains the current requirements for inner tanks.

b. Outer Tank

For DOT–113 tank cars, plate materials listed in M–1002 Appendix M must be used for the outer tank. Industry practice has been to fabricate the external tank from ASTM A516–70 steel. A516–70 steel has provided reliable performance in the service history of DOT–113 tank cars. However, PHMSA in this final rule is authorizing rail transport of LNG in DOT–113C120W-specification tank cars with enhanced outer tank thickness and materials (with a specification suffix ''9'' added to denote those enhancements). Specifically, this final rule requires DOT–113C120W9-specification tank cars carrying LNG to have a minimum outer tank thickness of 9/16'' (compared to 7/16'' for other DOT–113C120W-specification tank cars). Further, those thicker outer tanks must be made of TC–128 Grade B (TC–128B) normalized steel. TC–128B normalized steel is currently used for TIH and flammable liquid tank car designs and its manufacturing process produces a more puncture resistant steel as compared to A516–70 steel. AAR TC–128 Grade B normalized steel is a high-strength, fine-grained carbon-manganese-silicon steel intended for fusion-welded tank car tanks in service at moderate and lower temperatures. By normalizing (heating the steel to 1600 °F and air cooling) TC–128 steel and controlling its chemistry, the outer tank of an LNG tank car made from TC–128 Grade B steel has a reduced probability of tank failure due to cracking and an increased resistance to puncture compared to ASTM A516–70 steel.

The TC–128 Grade B normalized carbon steel used to construct the outer tank for DOT–113C120W9 tank cars does not maintain the same strength and ductility at the cryogenic temperatures of the lading. However, this is not a safety concern for DOT–113 tank cars. Existing DOT–113C120W tank cars used in cryogenic ethylene service have outer tanks constructed of ASTM A516–70 carbon steel. ASTM A516–70 is also not resistant to cryogenic temperatures, and has been used safely in the outer tank of DOT–113C120W tank cars for decades. Similarly, the steel used to construct the outer tanks of other ''tank-within-a-tank'' cryogenic packagings, including MC–338 cargo tanks, UN T75 portable tanks, and ocean-going LNG tanker ships, is not resistant to cryogenic temperature.

LNG in these packagings is contained during transportation in an inner stainless-steel tank or tank lined with cryogenic compatible liners, which maintains strength and ductility at cryogenic temperatures, while the outer tank provides accident protection and structural support to the packaging. The only way LNG can be released from the inner tank of a rail tank car to the void space between the inner and outer tanks is if the inner tank is compromised. In a rail accident, a puncture of the inner tank can occur only after the outer tank is breached. In such a scenario, any LNG released from the breach of the inner tank will also be released into the environment and not be contained in the space between the two tanks even if the outer tank is made of stainless steel that maintains strength and ductility at cryogenic temperatures. Therefore, there is no safety advantage in making the outer tank of stainless steel. On other hand, making the outer tank of stainless steel able to withstand cryogenic temperatures in addition to withstanding the in-train forces during transportation, providing puncture resistance, and ensuring structural support for the tank car would be prohibitively expensive (especially if the thickness is the same as or thicker than the adopted 9/16th inch TC–128 Grade B normalized carbon steel design).

As explained further below, PHMSA expects that each of the enhancements provided for in the final rule will improve tank car crashworthiness.

c. Determination of Inner and Outer Tank Requirements

PHMSA is maintaining the requirements for the inner tank. ASTM A 240/A 240M, Type 304 or 304L steel has the correct balance of strength, durability, and weldability for use in transportation applications for cryogenic materials, as demonstrated over many years of use. However, due to the possibility of LNG being transported in blocks of tank cars within each train that are larger than the blocks of tank cars that are typically used for rail transportation of other flammable cryogenic liquids, and in response to comments, PHMSA is authorizing in this final rule rail transportation of LNG

in DOT–113C120W-specification tank cars with enhanced outer tank thickness and materials (those enhancements to be indicated by the specification suffix ''9'') to obtain improved crashworthiness.

The inner tank design of DOT–113C120W9 tank cars will be identical to other DOT–113C120W-specification tank cars, and will have the same safety features to vent the contents in the event of an unsafe pressure increase. In essence, the lading retention capabilities of the DOT–113C120W9 and other DOT–113C120W-specification tank cars are identical, with specific enhancements to the outer tank of the tank car design being employed to increase crashworthiness.

The outer tank enhancements for the DOT–113C120W9 incorporate the best available technology for the outer tank of a tank car with little additional manufacturing costs. Increasing wall thickness and the use of normalized steel (which increases the ductility of the steel) of the outer tank wall together provide enhanced crashworthiness for the tank car. Previously, there was limited economic rationale to amend the outer tank characteristics for the DOT–113C120W tank car to incorporate those elements because of the small size of the fleet and the small number of tank cars within each train. The existing level of safety provided by the DOT–113C120W tank car and existing operational controls is sufficient for the current use scenarios, as shown by the safety history of that tank car with over 100,000 shipments.

Currently, because of market demand and usage patterns for ethylene, DOT–113 tank cars are transported as part of mixed commodity freight trains at one to three cars per train. However, as the number of tank cars within a train increases—in blocks of cars larger than three or in unit trains—there is a higher probability that a car containing a flammable cryogenic material such as LNG will be involved should a derailment or other accident occur.

PHMSA cannot predict the number of DOT–113C120W9 tank cars per train the LNG market will support, but we know that from ETS's application for DOT–SP 20534, that it has plans to operate unit trains of at least 80 cars per train at some point in the future. With the possibility of larger numbers of cars in LNG transportation, PHMSA and FRA have determined that applying improved outer tank requirements is feasible from a manufacturing and economic perspective. Given the feasibility of securing a more robust tank car design within prevailing manufacturing processes across North America, PHMSA determined that the authorization for transporting LNG by rail can achieve an additional safety margin by employing the more robust car design described herein.

If a tank car containing LNG is breached during a derailment, the LNG will behave largely the same way as crude oil or ethanol. The LNG lading will be released as a very cold liquid, creating an LNG pool that could catch on fire. Employing a thicker outer shell will reduce the puncture probability of the inner tank, and thus mitigate the consequences of the derailment. Moreover, a tank car is estimated to have a service life of approximately 50 years. DOT–113 tank cars compliant with the enhanced outer shell requirements are projected to cost 3% more to manufacture. When divided by the large number of carloads that would be carried during a DOT–113's 50-year service life, the 9/16th inch TC–128B normalized steel outer tank is highly cost-effective in that it will mitigate the consequences of derailment involving LNG by reducing the number of tanks punctured in the unlikely event of an accident. See our discussion of modeling crashworthiness in *Section III. B. 6. ''Finite Element Modeling and Validation''* for additional information.

3. Safety History

DOT–113 tank cars have a demonstrated safety record of over 50 years. More than 100,000 rail shipments of cryogenic material in DOT–113 tank cars have taken place with no reported fatalities or serious injuries occurring due to a train-accident caused release of product. Only twice—during the 2011 incident in Moran, KS and the 2014 incident in Mer Rouge, LA—did the inner tank of a DOT–113 tank car release product due to damage sustained during an accident. LNG transportation by rail in currently authorized packaging also has a demonstrated, albeit brief, safety history. Since LNG was authorized to be shipped by rail in T–75 UN containers, PHMSA and FRA have no record of any rail incidents involving these packagings.

4. Crashworthiness Assessment/Field Tests

PHMSA and FRA are confident, based on rigorous modeling, testing, and experience (described in detail in below), that the DOT specification tank cars, enhanced with a 9/16th inch outer tank made of TC–128 Grade B normalized steel, will provide sufficient crashworthiness in accident scenarios compared to tank cars manufactured from 7/16th inch A516–70 steel outer tanks. As part of the analysis conducted for the *Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains,* (HM–251; 80 FR 26643, May 8, 2015) along with the final rule RIA, PHMSA determined that there was a reduction in the number of tank cars punctured when increasing the outer tank thickness from 7/16th inch to 9/16th inch of TC–128 Grade B normalized steel with a train traveling at 40 mph.

This final rule will require the same increase in thickness of the same type of steel as was required in the HM–251 final rule for DOT–117 tank cars. PHMSA, therefore, expects a similar increase in safety benefits from the use of enhanced outer tank thickness and improved materials.

5. Comparison of Derailments

In the following table, FRA compared three derailment accidents that occurred in relatively similar conditions. All accidents involved trains travelling at similar speeds, in similar weather conditions, and with a similar number of cars derailed. The tank cars that derailed in Guernsey, Saskatchewan, had a tank thickness of 9/16th inch and had 62 percent fewer shell punctures than the tank cars that derailed in Casselton, North Dakota, and 69 percent fewer tank punctures than the tank cars that derailed in Arcadia, Ohio. The tank cars involved in the Casselton and Arcadia derailments had a tank thickness of 7/16th inch. These scenarios validate the extensive modeling and simulations done and provide evidence of the substantial safety benefit of requiring an outer tank thickness of 9/16th inch in the construction of the DOT–113C120W tank car that is being authorized for the transportation of LNG by rail in this rule.

TABLE 3—COMPARISON OF DERAILMENTS

	Derailment location		
	Guernsey, SK	Casselton, ND	Arcadia, OH
Derailment date	2/6/2020	12/30/2013	2/6/2011.
Temp at Time of Derailment	−18 °C (0 °F)	−18 °C (−1 °F)	−4 °C (25 °F).
Train speed (MPH)	42	48	42.
Type of cars (Specification)	DOT 117J (286K)	DOT 111 Legacy (263K)	DOT 111 Legacy (263K).
Shell Thickness	9/16th inch	7/16th inch	7/16th inch.
Total cars derailed	32	20	32.
Total cars breached	8	19	30.
Head Punctures	*0*	*3*	*10.*
Shell Punctures	*5*	*13*	*16.*
Fittings Compromised	*3*	*10*	*13.*
Product(s) released	UN 1267 Crude Oil	UN 1267 Crude Oil	UN 1987 Ethanol.
Fire Occurred	Yes	Yes	Yes.
Thermal Ruptures	No	Yes	Yes.
Approximate size of derailment area.	900′L × 250′W (est)	600′L × 600′W	1200′L × 450′W.
General topography of derailment area.	Flat field, raised RR bed	Flat/straight tangent track	Flat field, raised RR bed.

6. Finite Element Modeling and Validation

FRA's Research program, in coordination with PHMSA, funded the development and continued refinement of Finite Element (FE) Models for a variety of tank car specifications as well as computer simulation of impacts and derailments. FE modeling is a widely-used method for evaluating the effects of stresses on components or structures and is used in the fields of structural analysis, heat transfer, and fluid flow. Within the FRA research program, component and full scale tests results are used to validate the computer simulations and their assumptions and boundary conditions. Full scale test results are compared to simulation results, including the overall force-time or force-indentation histories, the puncture/non-puncture outcomes, the rigid body motions of the tank car, the internal pressures within the lading, and the energy absorbed by the tank during the impact.

The Volpe National Transportation Systems Center (Volpe Center) supports the FRA in this research effort, and has performed pre- and post-test FE analyses corresponding to several component and full-scale shell impact tests. Validated models and computer simulations are a necessary alternative to full-scale impact testing which are time consuming, expensive, and challenging to perform.

A primary purpose for a pre-test simulation is to estimate the threshold puncture speed of the test ram car. The puncture speed of the tank car is the speed at which, under the test conditions, the initial kinetic energy of the ram car is equal to the energy necessary to puncture the inner and outer tank. The threshold puncture speed is the maximum speed at which the tank car can be impacted under the prescribed conditions without resulting in a tear to the inner and outer tanks that would allow its lading to escape.

Results of recent tests and simulations demonstrate the potential improvement in crashworthiness from the outer tank enhancements set forth in this final rule. In November 2019 FRA conducted a full-scale impact test of a DOT–113C120W tank car at TTC in Pueblo, CO.[23] According to the test report, the initial kinetic energy imparted to the inner and outer tanks was about 2.8 Million ft.-lbs. Further, it is estimated that the residual energy (after puncture of the inner and outer tanks) was about 25% of the initial energy. Accordingly, the puncture energy of the DOT–113 tank is about 75% of 2.8 Million ft.-lbs., or 2.1 Million ft.-lbs. A separate full-scale impact test was performed on a DOT–117J100W specification tank car equipped with a jacket and thermal protection material. A review of the test report suggests that the tank (made of TC–128B normalized steel) absorbed an energy of about 1.9 Million ft.-lbs., without puncture. The report also notes that under those conditions, the tank was near puncture. PHMSA estimates the puncture capacity of the DOT–117 car to be about 2 Million ft.-lbs. Comparing the puncture capacities of the two tank specifications (DOT–113 @ 2.1 Million ft.-lbs., and the DOT–117 @ 2 Million ft.-lbs.), their performances are very similar, and that the DOT–113 might even have a slightly higher puncture resistance. The two tank cars have about the same cumulative thickness. Therefore, based on the puncture tests and modeling, PHMSA and FRA anticipate that increasing the outer tank thickness of the DOT–113 from 7/16 to 9/16 (a 28.5% increase), and requiring the use of the more puncture-resistant TC–128B normalized steel, will add about 20–30% to the puncture resistance (*i.e.,* reduction in number of punctures) of the DOT–113C120W9.

The above comparison of testing and simulation results was used to determine the suitability of the DOT–113 tank car for LNG service, as well as to determine the increased safety gained by using a 9/16th inch thick outer tank shell of TC–128 Grade B, normalized steel. Further, a similar model was created in the *Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains* [HM–251, 80 FR 26643] rulemaking to help evaluate how effectively the increased thickness improved on the DOT–111 tank car (predecessor to the DOT–117). The results of that modeling were factored into design of the current DOT–117 specification tank car which improved on the DOT–111 tank car design.

7. Loading and Preparation for Offering

In this final rule, PHMSA is adopting a 37.3 percent maximum filling density for LNG, which will allow for approximately 2 percent outage below the inlet of the pressure control valve to prevent the venting of liquid material at start-to-discharge pressure, thus ensuring the safe transportation of LNG. In the NPRM, PHMSA proposed a 32.5 percent filling density. However, PHMSA has determined a 37.3 percent maximum filling density is appropriate

[23] Full-Scale Shell Impact Test of a DOT–113 Tank Car, RR 20–03, February 2020.

because it is consistent with outages determined to be safe for LNG in other packagings such as MC–338 cargo tanks and UN T75 portable tanks. This maximum filling density is also more conservative than maximum filling densities set in the HMR for other flammable cryogenic materials, which allows for 0.5 percent outage at the start-to-discharge pressure. *See* § 173.319(b)(1). Additionally, a 37.3 percent maximum filling density harmonizes with Canada's Transportation of Dangerous Goods (TDG) regulations which have been in place since 2015.

PHMSA expects that any tank car containing a cryogenic material will be delivered to its destination within 20 days of offering, and requires notification of any car that has not reached its destination within this timeframe. *See* § 173.319(a)(3). Therefore, PHMSA is adopting a 15 psig maximum offering pressure, as proposed, which is appropriate for the transportation of LNG and is consistent with the level of safety provided to other flammable cryogenic materials. The HMR do not prohibit shippers from offering a tank car of LNG at a lower pressure.

8. Review Approval Provision to Exceed Weight

On May 14, 2010, PHMSA published a final rule amending the HMR to incorporate provisions contained in several widely used or longstanding special permits that have an established safety record. The final rule, *Hazardous Materials: Incorporation of Special Permits into Regulations* (75 FR 27205, May 14, 2010), in part, amended the HMR to allow certain rail tank cars transporting hazardous materials to exceed the gross weight on rail limitation of 263,000 pounds upon approval of the FRA. On January 25, 2011, the FRA published a notice (76 FR 4250) of FRA's approval pursuant to the Final Rule of the operation of certain tank cars in hazardous materials service that exceed 263,000 pounds and weigh up to 286,000 pounds gross rail load (GRL). In 2002, AAR adopted a revised industry standard related to railroad freight cars weighing over 263,000 pounds GRL and weighing up to 286,000 pounds. This revised industry standard, AAR Standard S–286 (adopted 2002, revised 2003, 2005, 2006), Free/Unrestricted Interchange for 286,000 pound GRL Cars (S–286), is applicable to rail freight cars manufactured, rebuilt or modified on or after January 1, 2003, and is the existing industry standard for designing, building, and operating rail cars at gross weights over 263,000 pounds and up to 286,000 pounds. S–286 sets forth industry-tested practices for designing, building, and operating rail cars at gross weights over 263,000 pounds and up to 286,000 pounds. S–286 provides for the free interchange among carriers of cars built to meet its requirements.

In this rulemaking, DOT–113 tank cars in LNG service will be required to have an outer tank that is 9/16th inch thick (after forming) and made from TC–128 Grade B, normalized steel plate. Depending on the specific design characteristics of a tank car manufactures approved car design, PHMSA and FRA determined that simply the use of 9/16th inch TC–128, Grade B normalized steel for the outer tank would not increase the GRL above 263,000 pounds; however, PHMSA and FRA understand that operators may select certain specification designs that may place the rail car at a GRL over 263,000 pounds.

In an effort to maintain consistency with FRA's current approval (*see* 76 FR 4250, January 25, 2011) of newly manufactured railroad tank cars with a GRL exceeding 263,000 pounds, this final rule will amend the HMR to state that tank cars manufactured for LNG service after (the effective date of this final rule) may be loaded to a maximum GRL of 286,000 provided the tank car meets the following criteria:

1. Tank car is constructed in accordance with S–286.
2. The outer shell and heads are constructed with TC–128 Grade B, normalized steel.

This aligns with the action PHMSA and FRA took when creating the DOT–117 specification and does not place a new burden on tank car manufacturers. A tank car manufacturer may therefore consider their design ''approved'' provided it meets the two conditions above, with no application to FRA or PHMSA required.

C. Additional Operational Controls for LNG Transportation

In the NPRM, PHMSA proposed to rely on the operational controls already required in the HMR for the transportation by rail of other flammable cryogenic materials, and invited comment on whether additional operational controls may be warranted. PHMSA encouraged commenters to provide data on the safety or economic impacts associated with any proposed operational controls, including analysis of the safety justification or cost impact of implementing operational controls.

In this final rule, PHMSA is amending the HMR to adopt operational controls beyond the current extensive requirements of the HMR. These additional operational controls consist of requirements for:

- A two-way end-of-train (EOT) device or distributed power (DP) for trains with 20 continuous tank cars of LNG, or 35 tank cars of LNG throughout the entire train;
- Location and inner tank pressure monitoring for each tank car containing LNG; and
- Compliance with § 172.820 route planning requirements (*i.e.,* rail routing).

PHMSA and FRA believe that the current requirements of the HMR ensure a robust level of safety for the transport of LNG by rail that is further reinforced by widely-adopted voluntary industry standards in AAR Circular OT–55. Additionally, the new operational controls in this final rule will add a still greater margin of safety to address the risks posed by LNG transportation in DOT–113C120W tank cars.

1. AAR Circular OT–55

AAR Circular OT–55 (OT–55) outlines operational controls for trains meeting the industry definition of a ''Key Train,'' including speed restrictions, track requirements, storage requirements, and the designation of ''Key Routes,'' which are subject to additional inspection and equipment requirements. OT–55 defines a ''Key Train'' as any train with:

- One tank car load of Poison or Toxic Inhalation Hazard (PIH or TIH) (Hazard Zone A, B, C, or D), anhydrous ammonia (UN1005), or ammonia solutions (UN3318);
- 20 car loads or intermodal portable tank loads of any combination of hazardous material, or;
- One or more car loads of Spent Nuclear Fuel (SNF), High Level Radioactive Waste (HLRW).

Key Trains have a maximum speed of 50 mph. If a defect to a rail car (*e.g.,* hanging equipment) is reported by a wayside detector but not confirmed by visual inspection, the maximum speed is reduced to 30 mph. Circular OT–55 defines a ''Key Route'' as ''any track with a combination of 10,000 car loads or intermodal portable tank loads of hazardous materials, or a combination of 4,000 car loadings of PIH or TIH (Hazard zone A, B, C, or D), anhydrous ammonia, flammable gas, Class 1.1 or 1.2 explosives, environmentally sensitive chemicals, Spent Nuclear Fuel (SNF), and High Level Radioactive Waste (HLRW) over a period of one year.'' OT–55 states that ''main tracks on 'Key Routes' must be inspected by rail defect detection and track geometry inspection cars or any equivalent level of inspection no less than two times

each year; sidings are similarly inspected no less than one time each year; and main track and sidings will have periodic track inspections that will identify cracks or breaks in joint bars.'' Finally, OT–55 states that ''wayside defective bearing detectors shall be placed at a maximum of 40 miles apart on ''Key Routes,'' or equivalent level of protection may be installed based on improvements in technology.'' These recommended practices were originally implemented by all major Class I rail carriers operating in the United States, with smaller short-line railroads following on as signatories.

While PHMSA did not propose to incorporate by reference OT–55 or to adopt the requirements for ''Key Trains'' in the HMR, the railroad industry's widespread, voluntary adoption of the circular is an important consideration for PHMSA in assessing the need for prescribing additional operational controls by regulation. AAR first published Circular No. OT–55 in January 1990 to document recommended railroad operating practices for the transportation of hazardous materials. The first issue of the circular included recommended mainline and yard operating practices, designation of key routes, proposed separations from hazmat storage areas, training of transportation employees, and implementation of TRANSCAER®. TRANSCAER® is a national community outreach program that works to improve community awareness, emergency planning and incident response for the transportation of hazardous materials, criteria for shipper notification, and procedures for handling time sensitive materials. Over the past 30 years, OT–55 has been routinely revised as needed to incorporate technological developments and other changes in industry practice concerning the safe transportation of hazardous materials. For instance, OT–55 has adopted revisions to AAR's interchange standards, and technology advancements such as the use of electronic emergency response information to provide timely and reliable information to emergency responders.

To further promote compliance with the recommended practices outlined in OT–55, and compliance with Federal transportation laws, the rail industry developed and published the *United States Hazardous Materials Instructions for Rail,* commonly referred to as ''HM–1.'' The purpose of the HM–1 is to provide the rail industry with uniform hazardous materials operating rules that railroads can implement and consistently apply to support compliance with Federal regulations, and to enhance significantly employee safety and the safety of the communities through which the railroads operate. The HM–1 may be implemented as published, or it may be modified by an individual railroad to be consistent with its unique operating rules and practices.

Through its enforcement activities, FRA verifies that each railroad has established operating rules governing the safe transportation of hazardous materials, and utilizes those instructions to enforce that railroad's compliance with the Federal operating and hazardous materials transportation regulations.

In accordance with the ''Key Train'' definition and the changes being adopted, OT–55's operational controls would apply to the bulk transport of LNG by rail in a train that is composed of 20 car loads or intermodal portable tank loads in which LNG is present along with any combination of other hazardous materials. Due to the operational controls required for ''Key Trains,'' Circular OT–55 provides an additional level of safety regardless of what combination of hazardous materials the train is transporting. PHMSA and FRA believe this industry standard reduces the risk of derailments and collisions and therefore decreases the risk involved in the transportation of all hazardous materials, including LNG.

PHMSA and FRA note that the hazardous materials operating instructions from Circular OT–55–Q, the most recent edition, have been incorporated into railroads' (carriers') operating rules. Furthermore, FRA regularly performs reviews of railroads and their operating rules and are not aware of any instances in which a railroad is failing to adhere to Circular OT–55 when operating ''Key Trains.''

2. Additional Operational Controls in the Final Rule

In this final rule, PHMSA is adopting several additional operational controls:

(1) Trains with a block of 20 loaded tank cars of LNG, or 35 loaded tank cars of LNG throughout the entire train, are required to be equipped with an EOT device or DP.[24]

(2) Each loaded tank car containing LNG must be monitored for location and tank pressure by the offeror and notify the carrier if the tank pressure rises by more than 3 psig in any 24-hour period.

(3) Each carrier operating trains carrying a loaded tank car of LNG must perform additional planning requirements in accordance with § 172.820 (*i.e.,* rail routing). While the general operational controls in the HMR, as supplemented by the widespread, voluntary practices governing Key Trains in Circular OT–55, provide robust protections against derailment and other accidents (and by extension, a loss of package integrity resulting from the same) involving train configurations with only a handful of tank cars, PHMSA believes that the additional operational controls established by this final rule will ensure safe transportation of LNG regardless of train configuration. As explained earlier, trains currently transport to three DOT–113 tank cars of flammable cryogenic materials (such as ethylene) in mixed commodity freight trains. However, if the market for rail transportation of LNG evolves to include movement of LNG in larger quantities (in blocks of cars or unit configurations) within each train, there is a higher probability that, should a derailment occur, one or more cars containing LNG would be involved and would be breached.

The additional operational controls will decrease the likelihood and severity of derailments (DP/EOT device); decrease the likelihood that an LNG tank car is lost in transport (location monitoring); increase the likelihood that the railroad is notified immediately in the unlikely event that a tank car experiences unsafe conditions during transportation (pressure monitoring); and reduce the severity of the consequences in a derailment scenario by requiring that railroads transport LNG on the safest route available to them (rail routing and risk assessment). Over a DOT–113 tank car's expected 50-year service life, the use of DP/EOT devices for block carriage and unit trains, remote monitoring, and risk-based routing of trains transporting LNG will help ensure the transportation safety of LNG on the rail transportation network.

Enhanced braking requirements can result in accident avoidance and can lessen the consequences of an accident by more quickly slowing the train and decreasing the energy of impacts by reducing the number of tank cars affected by a potential derailment. PHMSA decided on the HHFT threshold (*i.e.,* a continuous block of 20 loaded LNG tank cars or 35 loaded LNG tank cars throughout the train) based on the effectiveness of this existing requirement for flammable liquids in rail transportation. PHMSA reviewed the possibility of requiring electronically controlled pneumatic (ECP) braking on cars meeting the above threshold, but determined that ECP

[24] *See* Section IV, B. *Operational Controls, 1. Braking and Routing* for further discussion.

brakes are not a practical alternative given that ECP brakes are not cost justified when applied to unit train configurations in the HHFT environment. *See* HM–251F; 83 FR 48393 (Sept. 25, 2019).[25]

Given the availability of existing braking technologies, PHMSA is requiring advanced braking in the form of a two-way EOT device or, alternatively, a linked and operational DP system located at the rear of the train. A two-way EOT device or DP system is more effective than conventional brakes because a locomotive engineer can initiate an emergency brake application from the front and rear of the train, which can reduce stopping distances and lessen in-train forces that can cause or contribute to the severity of certain derailments. These advanced braking requirements are consistent with the current requirements for HHFTs, which apply to Class 3 flammable liquids that are transported in a single block of twenty cars or 35 cars dispersed throughout a single train.[26]

The requirement to remotely monitor a tank car containing LNG will allow shippers and carriers to better identify adverse conditions and prevent a non-accidental release of LNG while in transportation. Moreover, the requirements in this final rule allow for flexibility for shippers and carriers in determining how to best monitor the location of the tank cars and pressure within the inner tank. PHMSA and FRA expect that the industry will develop standard practices and implement technologies to meet the HMR performance standard for monitoring.

PHMSA is also adopting routing requirements in § 172.820 to further reduce the risk of a train accident. This amendment requires railroads to evaluate safety and security risk factors when assessing the potential routes to be used to transport LNG. The 27 safety and security risk factors set forth in Appendix D of Part 172 against which carriers evaluate their routes provide a robust framework for identifying and managing route-based risks associated with LNG transportation by rail. FRA regularly conducts evaluations of a railroad's route risk assessment requirements to ensure adherence to the requirement.

Requirements of the route analysis measures for a rail carrier include:

- Compilation of commodity transportation data;
- Analysis of safety and security risks for transportation route(s);
- Identification and analysis of potential alternate route(s); and
- Based on the above data, selection of the practicable route posing the least overall safety and security risk.

By expanding the existing route analysis and consultation requirements of § 172.820 to include LNG by tank car, PHMSA is incorporating additional safety elements that are available within the overall hazardous materials regulatory scheme. It is worth noting that routing requirements were not mandated in the special permit issued to ETS because the permit is issued to a shipper rather than a rail carrier who is ultimately responsible for the route risk analysis. In this final rule, there is no limitation on specific origins and destinations, thereby necessitating routing and risk analysis under § 172.820. Some of the operational controls included in special permit DOT–SP 20534 were not adopted or were revised in the final rule. The requirement to submit a plan providing per shipment quantities, timelines, etc., was included in DOT–SP 20534 in order to gather more information about the movement of the material. This requirement is not feasible for a broadly applicable regulatory authorization. In this final rule, PHMSA applied the HHFT criteria in reaching its determination to require the same braking requirements for LNG transportation. After review of the comments and the safety history of flammable liquid HHFTs, PHMSA concludes that this is best option to ensure safe movement of LNG. In the final rule, the remote monitoring requirements are different than what was included in the DOT–SP 20534 because PHMSA does not believe that direct monitoring for leaks is necessary. Monitoring for tank pressure and tank car location parameters will sufficiently inform the offeror of the tank car's location and condition and allow notification to the carrier should an undesirable condition occur. For example, registering and notification of an unexpected decrease in pressure could likely indicate a methane release and could be communicated immediately to the rail carrier and the closest emergency responders.

With respect to train length and weight limitations, PHMSA determined that there should not be a maximum for either in this rulemaking. PHMSA notes that the HMR do not limit the number of shipments a shipper can offer into transportation, nor do the HMR restrict the number or type of hazardous materials rail cars that a carrier can transport in a train. An individual railroad's appropriate train operating lengths are based on multiple factors, including, but not limited to, track profile, train make-up, train dynamics, and crew training. Due to these and other unique factors that influence a specific railroad's operation, PHMSA and FRA conclude that determination of appropriate train lengths is best left to the individual railroads.

Regarding separation distance, which is the number of non-placarded rail cars between a locomotive or occupied caboose and railcars containing hazardous materials (see § 174.85), PHMSA has concluded that it is appropriate to maintain the current requirement at this time, pending further study of the issue. Non-placarded rail cars are rail cars that do not contain an amount of hazardous material that require placarding (see 49 CFR part 172 subpart F for additional information about placarding requirements). The current requirement for a flammable gas, like LNG, requires a separation distance of five cars between the engine and placarded tank car, when train length permits. If train length does not permit a separation distance of five cars, the tank car(s) must be placed near the middle of the train, but not nearer than the second car from an engine or occupied caboose. These long-standing separation distance requirements protect train crews from the releases of hazardous materials in accident conditions. PHMSA and FRA collaborated under the scope of the Rail Safety Advisory Committee Hazardous Materials Issues Working Group Task No. 15–04 to consider the separation distance issue.

Ultimately, due to an absence of consensus of the Working Group participants, as well as a lack of established incident data, the members did not reach agreement on a change to the existing regulation governing hazardous materials in train separation distances. Moreover, PHMSA worked with the Volpe Center in its review of rail accidents occurring between 2006 and 2015 where there was a release of hazardous materials near the head end of the train (occupied locomotive). The review found no reported crew injuries

[25] PHMSA notes that while this rulemaking does not prohibit LNG rail transportation in unit trains, the likelihood is low that there will be LNG unit trains, at least initially. Development of the necessary infrastructure, especially construction of DOT–113C120W9 tank cars, to transport LNG by railroad, particularly by unit trains, demands significant financial investment, long term commitment, and considerable planning. LNG tank car fleets would need to be built, and there is a limit to the construction capacity of the industry. As a result, FRA anticipates that industry will transport LNG in smaller configurations, at least until infrastructure is in place to allow for unit train service.

[26] *See* Section IV, B. *Operational Controls, 1. Braking and Routing* for a more detailed discussion.

and therefore no injuries that were potentially preventable with additional buffer cars.

Extensive research exists on separation distance of hazardous materials from train crews and locomotives, and other hazardous materials in a train. PHMSA has initiated a research project in coordination with the John A. Volpe National Transportation Systems Center (Volpe Center) as an initial step in addressing NTSB Safety Recommendations R–17–1 and –2.[27] This effort will result in a report that identifies gaps in the existing studies, areas for further research, and what conclusions can be drawn collectively from the existing knowledge base, if any. PHMSA may consider changes to the separation distance requirements in § 174.85 of the HMR for placarded rail cars and tank cars in mixed commodity freight train and unit train configurations pending the outcome of the study.

In consideration of the foregoing, PHMSA is not amending the separation distance requirement in this final rule.

IV. Summary and Discussion of Comments to the Rulemaking Docket

The NPRM comment period closed on January 13, 2020. PHMSA received 445 comment submissions[28] to the rulemaking docket through the extended comment period. PHMSA considered all comments in the development of this final rule. The comments submitted to this docket may be accessed via *http://www.regulations.gov*. The following table categorizes the commenters by background:

TABLE 4—NPRM COMMENTERS

Commenter background	Count	Description and examples of category
Non-Government Organizations	27	Environmental Groups (17); Emergency Response Organizations (6); Other (4).
Governments	15	Local (6); State (6); Federal (2); Tribal (1).
Private Individuals	391	
Industry Stakeholders	12	Tank Car Manufacturers (1); Trade Associations (10); Shippers (1).

PHMSA received comments relating to tank car design, operational controls, emergency response, and potential environmental and economic impacts. These comments are summarized and discussed in greater detail below.

A. Tank Car Design

In the NPRM, PHMSA proposed to authorize DOT–113C120W tank cars for use in the transportation of LNG by rail and to amend the ''Pressure Control Valve Setting or Relief Valve Setting'' Table in § 173.319(d)(2) by adding a column for methane as follows:

TABLE 5—PROPOSED PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum start-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)				
	Ethylene	Ethylene	Ethylene	Hydrogen	Methane
17				6.60.	
45	52.8.				
75		51.1	51.1		32.5.
Maximum pressure when offered for transportation.	10 psig	20 psig	20 psig		15 psig.
Design service temperature	Minus 260 °F	Minus 260 °F	Minus 155 °F	Minus 423 °F	Minus 260 °F.
Specification (§ 180.507(b)(3) of this subchapter).	113D60W, 113C60W	113C120W	113D120W	113A175W, 113A60W	113C120W.

As discussed in the summary of amendments in this final rule in Section III, the start-to-discharge pressure setting, filling density, maximum offering pressure, and the thermal characteristics of the DOT–113 tank car in § 173.319 were selected to allow enough holding time (including loading, transit, storage incidental to movement, and unloading) such that the inner tank would not experience a pressure rise sufficient to activate the reclosing PRV during conditions normally incident to transportation. Additionally, if the pressure in the inner tank were to reach the start-to-discharge pressure of the reclosing PRV, the inlet to the valve would successfully vent vapor to relieve further pressure buildup. That is, the combination of these conditions (the start-to-discharge pressure setting, filling density, maximum offering pressure, and the thermal characteristics of the DOT–113C120W) acts as a safety measure to prevent activation of the PRV under normal conditions of transport. At the maximum offering pressure of 15 psig and the start-to-discharge pressure setting of 75 psig for the reclosing PRV adopted in this final rule, the tank car has a 60 psig pressure range before venting occurs. Using an average daily pressure rise of 0.75 to 1.5 psig as indicated by industry, even if the FRA notification requirement for tank cars in transportation for over 20 days is reached, the tank would see only a 15 to 30 psig pressure increase—meaning there would still be a 30 to 45 psig buffer remaining before venting occurs (or an aggregate 20 to 60 days of holding time). Please see *Section III. B. ''The DOT–113C120W Specification Tank Car''* for additional details on the offering pressure, set-to-discharge pressure, and the revised filling density requirements for LNG in this final rule.

[27] *https://www.ntsb.gov/safety/safety-recs/recletters/R-17-001-002.pdf*

[28] Some comment submissions noted additional signatories. Those were considered in the development of the final rule.

PHMSA received numerous comments about the tank car design for the transportation of LNG by rail, which it sorted into the following subtopics:

1. General Suitability of the DOT–113C120W Specification Tank Car;
2. Crashworthiness Assessment/Field Tests;
3. High Nickel Steels;
4. Maximum Permitted Filling Density;
5. Maximum Pressure When Offered;
6. Insulation;
7. Maximum Gross Rail Weight; and
8. The DOT–113C140W Tank Car Specification.

In this section, PHMSA responds to 15 sets of substantive comments related to tank car design for LNG transportation.

1. General Suitability of the DOT–113C120W Specification Tank Car

PHMSA received various comments regarding the general safety of the tank car design as proposed in the NPRM. Notably, the Railway Supply Institute Committee on Tank Cars (RSI–CTC) cited the regulatory history of the DOT–113C120W as an indication that DOT previously considered it for the transport of LNG and that the specification itself was originally designed to accommodate cryogenic materials, like LNG. RSI–CTC noted that the Hazardous Materials Regulations Board, a predecessor agency to PHMSA, published a notice in the **Federal Register** in 1971 as part of the HM–91 [29] rulemaking docket indicating that the agency was ''considering amendment of the Department's Hazardous Materials Regulations to provide for the shipment of ethylene, hydrogen, methane, [and] natural gas . . . in a cold liquefied gas state in certain tank cars.'' RSI–CTC further commented that the delimiter letter ''C'' indicates that DOT–113C120W tank cars were specifically designed for the safe transportation of cryogenic materials like LNG. They also pointed out that these cars are subject to additional operating requirements, namely thermal integrity and in-transit reporting requirements, which have led to a strong safety record of over 50 years. Similarly, the International Association of Fire Chiefs (IAFC) agreed with the NPRM's proposal to use DOT–113 tank cars, noting that other refrigerated liquids are transported safely using this specification.

Other commenters expressed concern over the tank car design, stating that there is a lack of testing on the suitability of the tank car for the transportation of LNG. The Governor of Washington State, on behalf of Washington State, claimed that PHMSA's assertion of a demonstrated safety record for DOT–113 tank cars is baseless without a completed risk assessment, because LNG is not currently authorized for transportation in DOT–113 tank cars and PHMSA and FRA may not be aware of every incident involving these cars. The Surfrider Foundation noted its belief that the proposed tank cars were never designed or intended to be used for the transport of LNG. Likewise, the California Public Utilities Commission (CPUC) expressed concern that PHMSA is moving forward with a deregulatory action without proper evaluation. CPUC also stated that transporting LNG in DOT–113 tank cars poses an unacceptable risk, further noting that an increase in pressure could trigger venting and that exposure of the newly vented gas to a heat source could result in an expanded fire or secondary explosion. Finally, CPUC also stated that the proposed modification to the HMR to authorize a DOT–113 tank car would be untested and that this is inconsistent with PHMSA's mission for safety.

Furthermore, various commenters—including the New York State Department of Transportation (NYDOT), the New York State Department of Environmental Conservation (NYDEC), the New York State Division of Homeland Security and Emergency Services (NYDHSES), and the NTSB—stated their belief that the limited number of incidents involving DOT–113 tank cars does not provide adequate evidence to ensure that they are safe for the transportation of LNG. These commenters expressed that the sample size of crashes is too small given the low number of DOT–113 tank cars in existence, and therefore, they requested additional research on the suitability of these tank cars for LNG service. Similarly, a group of environmental protection NGOs expressed their belief that PHMSA failed to provide analysis to justify its claim that the current known safety record of DOT–113 rail cars provides a meaningful comparison to their understanding of planned large-scale shipments of 100-car trains of LNG throughout the United States. They further commented that PHMSA did not provide adequate data or analysis to support its conclusions about how DOT–113 tank cars and their cargoes will behave in a potential crash on main line rail routes. Additionally, they asserted that PHMSA failed to provide data on the risk of cascading failure of tank cars, noting that the lack of data undermines PHMSA's statement that highway transportation is less safe than rail transportation. Furthermore, the Center requested that PHMSA consider the specific issues surrounding LNG tank cars, such as the placement of valves and other appendages that may be sheared off during a derailment; the puncture resistance of the tank car and potential jacketing to prevent punctures; the heat resistance of LNG tank cars to prevent explosions from fires during derailments; and braking requirements that are adequate for the weight of LNG tank cars.

With respect to concerns about the potential for explosions, the IAFC noted that the DOT–113 tank car is specifically designed to prevent a boiling liquid expanding vapor explosion (BLEVE) and that in the event of an accident, the LNG would initially spread before either warming or freezing. They further noted that if the released LNG were to catch fire, it would most likely be limited to the contents of the specific tank car that experienced the release, rather than spreading to the other tank cars. However, Earthjustice [30] expressed concern regarding two LNG motor vehicle accidents in Spain where a BLEVE was observed, and Physicians for Social Responsibility (PSR) noted that no test data or mathematical models exist to predict whether and when a LNG tank car exposed to an external fire would undergo a BLEVE.

PHMSA Response

PHMSA agrees with RSI–CTC's comment and notes that the HM–91 rulemaking specifically considered that ''methane, liquefied'' (as referenced in the rulemaking) could be shipped in a DOT–113C120W specification tank car.

The safety history of DOT–113C120W tank cars is sufficient to draw a conclusion that these tank cars are appropriate for the bulk transportation of LNG. Please refer to our discussion on the DOT–113C120W tank car in *Section III. B. ''The DOT–113C120W Specification Tank Car''* for further details. Also, please note that PHMSA is enhancing this already suitable packaging with additional outer tank requirements to improve crashworthiness. Although the HM–91 rulemaking published October 16, 1971 [36 FR 20166] and docket was subsequently withdrawn, PHMSA subsequently undertook a separate rulemaking published March 1, 1974

[29] *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/standards-rulemaking/rulemakings/archived-rulemakings/67251/36fr-20166.pdf.*

[30] Earthjustice's January 14, 2020 comment was filed on behalf for the Center, Clean Air Council, Delaware Riverkeeper Network, Environmental Confederation of Southwest Florida, Mountain Watershed Association, and Sierra Club.

[HM–115, 44 FR 12826] to authorize the transport of a flammable cryogenic material (ethylene) in DOT–113C120W specification tank cars. While methane (*i.e.,* LNG) was not authorized for transport in that later rulemaking, there is no indication in the record that the omission was due to safety concerns.

With respect to Earthjustice's concern, the above BLEVE incidents that occurred in Tivissa, Catalonia, Spain [31] and Zarzalico, Murcia, Spain [32] with cargo tank motor vehicles transporting LNG do not serve as an appropriate comparison to LNG rail tank cars. The tanks involved in these incidents had a single inner steel tank covered by an envelope of polyurethane foam and a lacquered aluminum jacket as opposed to the tank-within-a-tank design of the DOT–113C120W tank car consisting of an inner and outer tank made of steel. Although the cargo tanks involved in the incidents were both constructed of 304L stainless steel, the insulation material and the outer jacket (constructed of 2mm (0.080 in) of aluminum) held no vacuum. Neither the polyurethane insulation nor the thin aluminum, which were used in the construction and design of the outer tanks, are particularly fire resistant. Therefore, these envelopes around the tanks provided little fire protection in the accident scenarios.

Conversely, the DOT–113C120W tank car has a steel outer tank and a multi-layer insulation system, and is significantly superior in terms of both impact and fire resistance than the cargo tanks involved in the Spanish incidents. The annular space of the DOT–113 design works in combination with a properly functioning pressure relief system to diminish the likelihood of a high-energy event such as a BLEVE. Also, in the case of the Zarzalico accident, a significant portion of the insulation was destroyed by the fire, and in both cases the tank containing the LNG was directly exposed to the fire. Direct contact by flames resulted in increased pressure in the tank, followed by thermal tears of the unprotected tanks due to a decrease in material properties, rapid release of the contents, and subsequent ignition of the vapor cloud. Direct contact by flames on the inner tank of a DOT–113 is significantly less likely due to the more robust design of the DOT–113 tank car.

In response to comments from CPUC and members of the public, PHMSA notes that venting of a flammable cryogenic material, other than that caused by an accident, is prohibited, and is unlikely to occur given the DOT–113C120W tank car's safety features and operational controls to expedite the movement of flammable cryogenic materials. Although there may be rare instances as a result of offeror's failure to properly operate or maintain the pressure relief system, this concern is adequately addressed by existing HMR requirements for monitoring the average daily pressure rise, requirements for routine maintenance of PRDs, and the supplemental requirement adopted in this final rule to monitor the pressure in the tank remotely so that the shipper will be aware of issues that may result in venting before the tank car reaches its destination. Please see our discussion of existing operational controls in the HMR and the tank car design features in *Section III.* ''*Amendments to the Hazardous Materials Regulations Adopted in this Final Rule*'' of this final rule for further discussion of the existing framework that ensures safe, expedited movement of flammable cryogenic materials like LNG.

CPUC's comment brought up concerns over potential secondary fires caused by the release of LNG from a tank car due to exposure to fire, and BLEVEs of tank cars exposed to fire. As stated in the NPRM, DOT–113 specification tank cars are inherently more robust when compared to other specification tank cars, due to their unique design, materials of construction, and their specific purpose to transport cryogenic materials. The tank-within-a-tank design of the DOT–113 specification tank car reduces the probability of cascading failures of other undamaged DOT–113 specification tank cars being transported in a block or unit train configuration. While it is possible that ignition of these vapors could occur if an ignition source is present, the fire would be contained to the proximity of the release point of the vapors from the tank car. Additionally, it is highly unlikely that an undamaged DOT–113 specification tank car involved in a derailment would result in explosion due to a BLEVE due to the design of the tank car, the loading pressure requirements for cryogenic materials, the mandated requirements for redundant pressure relief systems (valves and safety vents) and the insulation systems that are built into each car. It is not possible to state with certainty whether a BLEVE is possible in the case of a LNG tank car derailment, and what conditions need to be present for such an event to occur. However, in a full-scale test [33] conducted in 2018, a double walled portable cryogenic tank was filled with liquid nitrogen (and PRDs operated as designed) and exposed to a greater than 200-minute engulfing propane pool fire. The tank was neither destroyed nor did a BLEVE occur.

Based on the suitability of the DOT–113 design and material of construction for cryogenic material, safety history of the car, and the existing framework in the HMR for hazard communication and operational control, PHMSA concludes that the DOT–113C120W tank car is a safe packaging to transport LNG by rail. PHMSA has evaluated years of LNG transportation via other modes and packagings, both international and domestic, to help assess the potential risks of LNG by rail resulting in our determination that the containment vessel is an equally safe alternative. PHMSA reaffirms that the DOT–113 tank car is suitable for use in LNG service, as it has a demonstrated safety record of over 50 years in the service of similar flammable cryogenic materials.

2. Crashworthiness Assessment/Field Tests

PHMSA received various comments regarding the crashworthiness and general field testing of the DOT–113C120W tank car. Notably, NTSB and other commenters requested that PHMSA and FRA complete a thorough crashworthiness and safety assessment of the DOT–113C120W tank car specification prior to authorizing it for LNG service. Further, they stated that relying on data for the accident history of similar hazardous materials transported in the small fleet of DOT–113 tank cars (as was done in the NPRM) or making engineering assumptions based on the performance of pressure tank cars with different features and operating parameters (as was done in the Exponent Report [34] referenced in the Special Permit 20534 docket) does not provide a statistically significant or valid safety assessment.

[31] *Explosion of a road tanker containing liquefied natural gas.* Eula'ia Planas-Cuchi, Nu´ria Gasulla, Albert Ventosa, Joaquim Casal. Journal of Loss Prevention in the Process Industries 17 (2004) 315–32. *https://www.academia.edu/7741565/Explosion_of_a_road_tanker_containing_liquified_natural_gas.*

[32] *Analysis of the Boiling Liquid Expanding Vapor Explosion (BLEVE) of a Liquefied Natural Gas Road Tanker: The Zarzalico Accident.* E Planas, E. Pastor, J. Casal, J.M. Bonilla. Centre for Studies on Technological Risk (CERTEC). Department of Chemical Engineering. Universitat Politècnica de Catalunya. *https://core.ac.uk/download/pdf/46606613.pdf.*

[33] FRA Full Scale Test titled: ''Fire Performance of a UN–T75 Portable Tank Phase 1: Loaded with Liquid Nitrogen''.

[34] The referenced Exponent Report is a study to examine the risks of bulk transportation of LNG by investigation the potential risk profiles for transport of LNG versus liquefied petroleum gas (LPG) by cargo tank motor vehicle and rail tank car. *https://www.exponent.com/knowledge/alerts/2015/08/bulktransportation/~/media/03b73782ec76446798c70f6ac403ef84.ashx.*

They also called into question how PHMSA determined that the specification DOT–113C120W tank car is an acceptable packaging to transport LNG. They noted their belief that the small number of DOT–113 tank cars in use and the documented 14 incidents referenced in the NPRM, in which three shell breaches occurred between 1980 and 2017, do not provide a demonstrated safety record. The Physicians for Social Responsibility cited the need to develop a new, robust tank car design. The Delaware Riverkeeper Network cited a lack of field tests on the survivability of the DOT–113 tank car loaded with LNG and the lack of simulation of the tank car ''hulls.'' The Puyallup Tribe of Indians stated its belief that PHMSA is in violation of the APA, stating that the NPRM was not supported by a complete and technically sufficient administrative record because there are ongoing and incomplete studies to determine the safety of transporting LNG in DOT–113 tank cars.

Earthjustice questioned the suitability of the DOT–113 tank car noting that ''. . . of the three specific derailments of the DOT113C120 tank car noted by the EA, all three ended up either breaching or needing to be breached and losing their entire cargoes. This represents 4.5% of the entire DOT113C120 tank car fleet.''

PHMSA Response

As noted previously, PHMSA does not agree that Earthjustice's analysis calls into question the suitability of the DOT–113C120W tank car. PHMSA has concluded that the safety history of DOT–113C120W tank cars is sufficient to demonstrate that these tank cars are appropriate for the transportation of LNG, as the DOT–113 tank car has a demonstrated safety record of over 40 years. Since authorized in the HMR, there have been no train-accident related fatalities or serious injuries in over 100,000 shipments of cryogenic material in DOT–113 tank cars. PHMSA has reviewed the approximately 450 Incident Report Form 5800.1 filings involving releases from DOT–113 (or equivalent AAR204W [35]) tank cars. Nearly all of these filings resulted from the non-accidental release of product attributed to defective or improperly secured valves and/or associated fittings and not a breach of the tank. The HMR requirements for the design and material of construction for the DOT–113, as well as existing operational controls and handling requirements for the tank car, have contributed significantly to the strong safety history of the DOT–113.

PHMSA disagrees with the suggestion that the Exponent Report in support of the DOT–SP 20534 is irrelevant to the discussion. That study conducted a quantitative risk assessment addressing unit train movement of LNG in DOT–113 tank cars. The study creates multiple models that estimate the potential damage of an LNG incident. Specifically, transport releases were evaluated along 1-mile long segments with varying population densities. While commenters have claimed that the study does not have a large enough sample size, PHMSA notes that the study used all the available data on DOT–113 incidents. The reason for that perceived lack of data is that DOT–113 tank cars have not been involved in many incidents during the timeframe that DOT–113s have been in use. Given that the study uses all the available data on DOT–113 incidents, PHMSA believes that the study's findings are useful in informing this final rule.

After internal review and in consideration of certain substantive comments received to the NPRM, PHMSA is further enhancing the safety of these tank cars to be equipped with a 9/16th inch thick outer tank and constructed from TC–128 Grade B Normalized steel. This represents a 28% increase in outer tank thickness over the current minimum requirements for a DOT–113C120W tank car in use for other flammable cryogenic materials. PHMSA has concluded that this change will improve the crashworthiness of the tank, thereby improving its effectiveness in retaining LNG contents during a crash scenario. This conclusion is supported by modeling conducted on the DOT–117 specification tank car with a 9/16th inch thick shell and heads used in flammable liquid service when compared with the previous DOT–111 tank cars with 7/16th inch steel. See *Section III. B. ''The DOT–113C120W Specification Tank Car''* for further details on the tank car enhancements added in this final rule.

3. High Nickel Steels for Inner Tanks

The Puyallup Tribe stated that PHMSA failed to provide a sufficient factual basis to support its assertion that the materials used in the fabrication of DOT–113 tank car inner tanks are appropriate for the transportation of LNG. They noted that stationary LNG storage tanks use high nickel steels and that the specifications for American Society of Testing and Materials (ASTM) A240/240M 304, or 304L steels used in DOT–113C120W tank cars provide for a range of nickel content that can equal—but can also extend outside of—the range recommended for stationary LNG tanks. Therefore, they commented that there is no evidence that all steels meeting this specification will have the performance specifications appropriate for storing LNG that is being transported by rail. The Tribe further expressed their belief that PHMSA has not adequately demonstrated why ASTM A240/240M 304, or 304L steel will ensure safe transport of LNG in tank cars.

PHMSA Response

PHMSA disagrees with the Puyallup Tribe that there is no factual basis for the existing requirements for ASTM A240/240M 304, or 304L steels. The ASTM 300 series steels required in part 179 for DOT–113 tank cars have a long, successful history demonstrating the suitability of this steel as the material of construction for the inner tank of DOT–113 tank cars.

The 300-grade austenitic stainless steels (304/304L), commonly referred to as ''18–8 grade'' stainless steels, are the only steels authorized in the HMR for use when constructing the inner tank of a DOT–113 tank car. As discussed in *Section III. B. ''The DOT–113C120W Specification Tank Car,''* ASTM A240/240M 304, or 304L steels have the best balance of toughness, strength, and weldability for transportation, along with being able to withstand extremely low temperatures.

By contrast, ASTM A553 steel, also known as ''9% Nickel'' alloy steel, has less ductility and requires special welding protocols. A553 steel can be used for static storage vessels which do not have to withstand the dynamic stress conditions experienced by the tank car during movement and the more frequent thermal cycles of loading and unloading experienced by tank cars. In tank cars, the use of A553 steel is not advisable, due to the physical properties of the steel. The HMR have not approved it for use in tank cars, in part, due to problems encountered with welded repairs.

Therefore, in this final rule, PHMSA is maintaining the requirement to construct the inner tank of a DOT–113 tank car from ASTM A240/240M 304, or 304L steels for the inner tank. Please see *Section III. B. ''The DOT–113C120W Specification Tank Car''* for further discussion of the properties of 304 and 304L steel and the material of construction requirements for the inner tank of a DOT–113 tank car.

[35] The AAR204W is also authorized for the transportation of non-flammable cryogenic materials and has a similar design to a DOT–113.

4. Maximum Permitted Filling Density

AAR, RSI–CTC, and Chart Inc. disagreed with the maximum filling density proposed in the NPRM. Chart Inc. recommended that the filling density be 38.1 percent for a safety relief valve set at 75 psig, thereby corresponding to the 51.1 percent tabulated value for liquid ethylene. Chart Inc. further noted that flammable cryogenic materials in tank cars are required to have a 0.5 percent outage below the inlet of the pressure relief or pressure control valve at the start-to-discharge pressure setting of the valve, with the tank car in a level attitude.

RSI–CTC commented that PHMSA did not provide an explanation as to why it is imposing a maximum filling density that results in 15 percent outage rather than the standard 0.5 percent outage identified in existing regulations for other flammable cryogenic materials authorized by rail tank car. They stated that limiting LNG to a maximum filling density of 32.5 percent would require approximately 13 percent more tank cars to move the same volume of commodity, noting that this could increase the risk in transportation. Moreover, they stated that PHMSA's proposed limit is inconsistent with Transport Canada's regulations, which impose a 37.3 percent maximum filling density. To resolve this issue, they recommended that PHMSA consider adopting a maximum filling density of 37.3 percent, which they point out would harmonize the United States and Canada, as well as reduce the overall safety risk by reducing the total number of tank cars required.

PHMSA Response

PHMSA notes the concerns over the proposed filling density and the potential inconsistencies related to the outage requirements for flammable cryogenic materials. The filling density of 32.5% specified in the NPRM was based on a 15% outage (vapor volume) at PRV start to discharge pressure. The AAR Manual of Standards and Recommended Practices, M–1004 ''Specifications for Fuel Tenders'' requires the LNG filling of tenders used to fuel LNG powered locomotives with 15% vapor volume. The operating demands on tenders combined with the need for more vapor as a fuel and the expected refueling processes make the filling density acceptable for use with fuel tenders. In contrast, tank cars do not require these same considerations, and thus, the filling density should be aligned with other bulk packagings.

After reviewing the comments provided to the NPRM and conducting further technical analysis, PHMSA agrees that the proposed 32.5 percent filling density unnecessarily limits the amount of LNG that can be loaded into the tank car designed for commercial shipments and not locomotive fueling. Calculations were performed through linear regression analysis of authorized filling densities for cryogenic material in cargo tanks (*see* § 173.318). The equations derived during that analysis were compared with filling density values currently authorized for tank cars in § 173.319 for ethylene and hydrogen. The comparison between cargo tanks and tank cars filling density values held true for ethylene and hydrogen, so the equation was therefore used to derive the filling density for LNG in tank cars. This filling density value was compared to the results of calculations conducted by AAR, Transport Canada, and FRA. A filling density of 37.3% by weight is consistent with these four (AAR, Transport Canada, FRA, PHMSA) analyses.

Therefore, in this final rule PHMSA is adopting a 37.3 percent maximum filling density for LNG, which will require approximately 2 percent outage below the inlet of the PRD at the start-to-discharge pressure to prevent the venting of liquid material should the device activate. This represents a greater level of safety than other cryogenic packagings authorized in the HMR and internationally, which only require a 0.5% outage requirement below the PRD inlet at the start-to-discharge pressure. Additionally, a 37.3 percent maximum filling density harmonizes with Transport Canada's TDG regulations. Please see the *Section III.B.* ''*The DOT–113C120W Specification Tank Car*'' discussion for additional discussion of filling density.

5. Maximum Pressure When Offered

RSI–CTC stated that the proposed offering pressure of 15 psig for the Pressure Control Valve Setting or Relief Valve Setting in § 173.319(d)(2) is inconsistent with Transport Canada's requirements, which impose a 10 psig maximum offering pressure, and departs from AAR's practice of assuming a 10 psig maximum offering pressure to determine the individual specification requirements for DOT–113C120W tank cars. They also stated that while PHMSA appears to be relying on § 173.319(e)(1) for its determination that 15 psig is consistent with the 20-day transportation requirement for cryogenic materials and the estimated 3 psig per day maximum pressure increase during transportation, current regulations for DOT–113 tank cars as set forth in part 179, subpart F do not specify a time-in-transit limit for cryogenic materials. Rather, RSI–CTC asserted that both DOT's predecessor and the AAR have historically assumed a 30-day hold time in developing the DOT–113C120W specification. Moreover, the commenter noted that the average daily pressure rise limit of 3 psig per day, as set forth in § 179.319, is an operating specification for shippers designed to trigger inspection of the tank vacuum to ensure thermal integrity and should not be imposed as a design requirement to calculate the maximum offering pressure.

PHMSA Response

PHMSA agrees that the HMR do not specify a time-in-transit limit. However, PHMSA requires notification to FRA if a flammable cryogenic material has not reached the consignee within 20 days. FRA closely monitors any situation requiring notification of more than 20 days in transit, and our experience is that rail carriers act to expedite movement of the tank car to its destination or take swift corrective action to reduce the pressure within the tank if necessary. Therefore, PHMSA believes that the 15 psig maximum offering pressure is appropriate for the transportation of LNG and is consistent with the level of safety provided to other flammable cryogenic materials. Further, the HMR do not prohibit shippers from offering a tank car of LNG at a lower pressure. Please see *Section III.B.* ''*The DOT–113C120W Specification Tank Car*'' and *III.C.* ''*Additional Operational Controls for LNG Transportation*'' for additional discussion of offering pressure and the operational controls for the movement of these tank cars.

6. Insulation

Chart Inc. noted in their comment that Mylar is a plastic material that is incompatible with the potential for flammable gas in the annular space. They further stated that common wrapped insulation used in such tanks is often referred to as MultiLayer Insulation (MLI), Super Insulation (SI), or MultiLayer Super Insulation, which consists of alternating layers of aluminum foil and a non-conducting spacer material. Chart Inc. further explained that fiberglass or Perlite powder can be used as a potential alternative in place of or in addition to the MLI or SI.

PHMSA Response

PHMSA agrees that use of the term Mylar in the preamble of the NPRM was inconsistent with the current design and practice. The DOT–113 construction

design relies on a performance standard in § 179.400–4 that does not specify the use of Mylar or any other specific type of material to be used for insulation. In the NPRM, PHMSA inadvertently represented ''Mylar'' as a specification requirement for MLI or SI use on a DOT–113, when in fact, it is not. Please see our discussion of the insulation system and thermal performance monitoring program in Section III of this final rule for more information on DOT–113 insulation requirements.

7. Maximum Gross Rail Weight

RSI–CTC and AAR commented on the existing allowable gross weight of rail tank cars. They stated the FRA provided notice in the **Federal Register** of approval of the operation of certain tank cars in hazardous materials service up to 286,000 pounds GRL, further noting that this approval does not address cryogenic tank cars.[36] Specifically, RSI–CTC recommended adding language in § 179.13 that would authorize a GRL limitation of up to 286,000 pounds, thereby removing the need for FRA approval and allowing for heavier inner or outer tanks. They further stated that authorizing cryogenic tank cars to operate with 286,000 pounds GRL would not increase the volume of commodity transported (which would still be limited to 34,500 gallons) and would enable manufacturers to increase the weight of the tank car by building it with a thicker outer shell, which would enhance the overall safety of these tank cars in cryogenic service.

PHMSA Response

PHMSA acknowledges that the thicker outer tank, as required in this rulemaking, will have a net impact of increasing the overall weight of a loaded DOT–113C120W9 tank car. The added tank thickness is expected to increase the overall weight of the tank car by approximately 11,050 pounds. See the Table 6 below for a comparison of the DOT–113C120W and DOT–113C120W9 tank car weights. PHMSA estimates the light (empty) weight of a DOT–113 tank car for LNG to be approximately 138,050 pounds and the estimated weight of allowable LNG that can be loaded into the car at roughly 108,000 pounds. This equates to a maximum gross weight on rail of only 246,050 pounds. However, the request to remove the approval requirement for tank cars greater than 263,000 pounds GRL is beyond the scope of this rulemaking, as it is not specific to LNG and would therefore impact all cryogenic materials transported by tank car. Additionally, while 2011 FRA Notice does not specifically mention cryogenic tank cars, PHMSA and FRA reiterate that the broad language in the FRA's January 2011 approval clearly contemplates application to cryogenic tank cars. Therefore, a DOT–113 tank car manufactured for LNG service after (the effective date of this final rule) is approved for a maximum GRL of 286,000 provided the tank car meets the following criteria:

1. Tank car is constructed in accordance with S–286.

2. The outer shell and heads are constructed with TC–128 Grade B, normalized steel.

Please see our discussion of maximum GRL in *Section III.B.* ''*The DOT–113C120W Specification Tank Car*'' of this final rule for additional details. PHMSA is adding a new section, § 179.400–26, to the DOT–113 specification requirements to indicate clearly that DOT–113C120W9 tank cars exceeding 263,000 lbs. gross weight are (in light of FRA's January 2011 approval) approved by FRA for a maximum gross weight of 286,000 provided they meet the two conditions above.

The following table provides a comparison of the approximate weight of a DOT113C120W tank car with an outer tank shell thickness of 7/16 (*i.e.,* the current standard) vs. 9/16 *(i.e.,* the standard adopted in this final rule) is provided in the following table. Note that stiffening ring weight changes with outer tank thickness. In this comparison, a thicker outer tank corresponds to less stiffening ring weight.

TABLE 6—GROSS RAIL WEIGHT CALCULATION

[Approximate weights for a DOT113C120W Tank Car]

Outer Shell Thickness.	7/16″	9/16″.
Inner Tank Thickness.	3/8″	3/8″.
Combined Tank Weight.	98,250 lbs..	109,500 lbs.
Stiffening Ring Weight.	1,750 lbs.	1,550 lbs.
Fittings/Piping/Housing.	3,800 lbs.	3,800 lbs.
Running Gear	23,200 lbs..	23,200 lbs.
Estimated Light Weight.	127,000 lbs..	138,050 lbs.

8. DOT–113C140W Tank Car Specification

Consistent with its prior petition, AAR reiterated its suggestion that PHMSA adopt the DOT–113C140W tank car standard. However, AAR noted that PHMSA may require more time to evaluate the new tank car specification, as it is not currently authorized by the HMR. Therefore, AAR suggested that PHMSA proceed with authorizing the DOT–113C120W tank car for LNG service at this time and consider authorizing the DOT–113C140W tank car in a future rulemaking.

PHMSA Response

PHMSA agrees that it would take additional time and resources to create and evaluate a new specification (*e.g.,* the DOT–113C140W) not authorized under the current HMR. Furthermore, PHMSA believes the addition of this tank car specification warrants further engineering review and evaluation, including consideration of safety risks presented by the new design specification. Increased thickness and improved outer tank materials, as required in this final rule, require minimal engineering effort; and insofar as PHMSA regulations establish *minimum* thickness requirements for DOT–113 cars, those regulations have always permitted outer tanks of varying thickness above those lower limits.

In contrast, a new inner tank design with a higher test pressure of 140 psig requires significant engineering effort that is beyond the scope of this rulemaking. An inner tank designed to withstand a test pressure of 140 psig has a thicker wall, and has different pressure relief features that would need to be tested extensively prior to authorization for use in transportation. The designs for the new inner tank, the 140 psig pressure relief system, and the new design's thermal performance would each need to be validated. The inner tank, along with the thermal protection provided by the annular space, is the most safety critical component to retaining the contents of the car during normal conditions incident to transportation. The outer tank, on the other hand, shields the inner tank from physical damage, exposure to the elements, and in-train forces, while providing structural support to the packaging. Unlike a change to the inner tank, the enhancements to the outer tank denoted by the new specification suffix would not require the extensive additional engineering review because PHMSA and FRA have access to testing and modeling data that demonstrate the

[36] Notice regarding FRA approval for operating certain railroad tank cars in excess of 263,000 pounds gross rail load. January 25, 2011; 76 FR 4350.

crashworthiness improvements from a thicker 9/16th inch outer tank.

9. PHMSA Determination Regarding Tank Car Design

In summary, PHMSA acknowledges the comments received addressing the appropriateness of the DOT–113C120W tank car for LNG transportation. As discussed in this section, and in Section III, PHMSA has concluded that the DOT–113C120W tank car is an appropriate packaging for LNG transportation.

The existing structure of the HMR—to include requirements for packaging design—provides for the safe transportation of all hazardous materials. The DOT–113C120W9 tank car is a variation of the DOT–113 specification currently authorized in the HMR for use as a packaging for cryogenic material, including flammable cryogenic material like LNG. The ''C'' delimiter for this type of tank car indicates a temperature rating for service that is suitable for LNG. Furthermore, the existing HMR include requirements for components specific to flammable cryogenic material services, such as PRDs and thermal insulation systems.

PHMSA believes that transportation of LNG by DOT–113C120W-specification rail tank car as proposed in the NPRM would be safe if LNG was transported in similar quantities to what is currently done for ethylene. Currently, because of market demand and usage patterns for ethylene, DOT–113 tank cars are transported as part of mixed commodity freight trains at one to three cars per train. However, when transported in larger fleets—in blocks of cars larger than three or in unit trains—there is a higher probability that cars containing this material will be involved in a derailment when a derailment or other accident occurs, leaving the potential for more hazardous material to be released during an incident. While PHMSA cannot predict the number of DOT–113C120W9 tank cars per train the LNG market will support, the agency does have relevant information from ETS's application for DOT SP 20534, which indicates the company plans to operate unit trains of at least 80 cars per train at some point in the future. Therefore, even though the current outer tank specifications of existing DOT–113s are appropriate for the physical properties of LNG, the potential increased risk involved in transporting LNG in blocks of more than three or in unit trains warrants the additional safety margin that is currently available from the tank car manufacturing industry. As a result, PHMSA is amending the DOT–113 specification to require tank cars with a minimum outer tank thickness of 9/16th inch constructed from TC–128 Grade B, normalized steel (those enhancements to be indicated by the specification suffix ''9''). PHMSA believes that this change will further enhance the safety of the DOT–113 tank car by significantly increasing its crashworthiness.

B. Operational Controls

PHMSA did not propose supplemental operational controls in the NPRM beyond the existing requirements in the HMR, but did invite comment on whether PHMSA and FRA should rely on existing regulations and the operational controls in AAR's Circular OT–55, or if additional operational controls may be warranted based on an assessment of risk. PHMSA encouraged commenters to provide data on the safety or economic impacts associated with any proposed operational controls, including analysis of the safety justification or cost impact of implementing operational controls. Further, PHMSA invited comment on the operational controls included in the special permit described above, due to the overlapping content contained in the NPRM.

Numerous commenters expressed concern about the possible operational controls associated with the transportation of LNG by rail. For example, the International Association of Fire Fighters (IAFF) suggested that PHMSA conduct a more expansive safety assessment of the DOT–113 rail car before making the decision to forgo additional operational controls. In the responses below, PHMSA has sorted these comments into the following subtopics: Braking and Routing Requirements, Maximum Train Length and Weight, Speed Restrictions and AAR Circular OT–55, and Separation Distance. Please also see *Section III.C.* ''*Additional Operational Controls for LNG Transportation*'' for more discussion.

1. Braking and Routing Requirements

NTSB, the Transportation Trades Department, AFL–CIO (TTD), New Jersey Department of Environmental Protection (NJDEP), Members of the New Jersey Senate and Assembly, NYDOT, NYDEC, NYDHSES, IAFF, and others commented that PHMSA should require braking and routing requirements for trains carrying LNG. NTSB specifically commented that PHMSA should require that trains be ''equipped and operated with either electronically controlled pneumatic (ECP) brakes, a two-way end-of-train (EOT) device as defined in 49 CFR 232.5, or a distributed power (DP) system as defined in 49 CFR 229.5.''

Conversely, AAR commented that there is no justification for braking and routing requirements for trains carrying LNG shipments to be as restrictive as the requirements for HHFTs. AAR noted that if PHMSA were to apply braking and routing requirements similar to those imposed on HHFTs to trains carrying LNG, the requirements should only apply to a train transporting 20 or more loaded tank cars of LNG in a continuous block, or to a train carrying 35 or more loaded tank cars of LNG throughout the train.

PSR and the Surfrider Foundation expressed concern that the possibility of a terrorist attack has not been properly considered when looking at the security measures for LNG by rail. They further stated that the urban routing of LNG unit trains would make them highly vulnerable to attack by terrorists and that the predictability and visibility of commercial rail traffic through urban settings would make targeting easy and devastating. The Governor of Washington State, on behalf of Washington State, also expressed concern that the NPRM did not address the risk of terrorist attacks.

PHMSA Response

PHMSA agrees that requiring enhanced braking is necessary for trains meeting an LNG analog of the HHFT threshold (*i.e.,* 20 continuous tank cars of LNG or 35 tank cars of LNG throughout the train). PHMSA and FRA determined that this threshold best captures the higher-risk bulk quantities transported in unit trains, while excluding lower-risk manifest trains. PHMSA and FRA have concluded that the HHFT threshold is suitable for the transportation of LNG because these materials have similar risk profiles when transported in such configurations. If a tank car containing LNG is breached during a derailment, the LNG will behave largely the same way as crude oil or ethanol. The LNG lading will be released as a very cold liquid, creating an LNG pool and likely a fire.

The effective use of braking on a train can result in accident avoidance and can lessen the consequences of an accident by diminishing in-train forces. This can reduce the likelihood of a tank car being punctured and decrease the likelihood of a derailment. PHMSA believes that requiring enhanced braking for these train configurations provides a cost-effective way to reduce the number of cars and the energy associated with train accidents.

In consideration of the comments received, consistent with comments from NTSB and others, PHMSA is adding a requirement that for a single train with 20 or more loaded tank cars of LNG in a continuous block or a single train carrying 35 or more loaded tank cars of LNG throughout the train, each carrier must ensure that the train is equipped and operated with either an EOT device, as defined in 49 CFR 232.5, or a DP system, as defined in 49 CFR 229.5.

Some public commenters, including Earthjustice, noted that PHMSA did not propose a requirement that trains transporting LNG be equipped with ECP brakes, which they suggest would provide an extra measure of safety. PHMSA and FRA did consider adopting ECP brake requirements in this final rule but ultimately determined that such a braking requirement would not be practical.

Freight railroads in the U.S. overwhelmingly rely on conventional air brakes to comply with FRA regulations for stopping a train.[37] This conventional air brake system has been in use since 1869 and has proven to be reliable and effective. Conventional air brakes use air pressure to apply and release the brakes on each car in a train. When air pressure is reduced in a braking application, the air brakes will apply sequentially from the front to the back of the train. ECP brake systems are an alternative braking technology that integrate electronic and pneumatic communications hardware into one package to allow for nearly instantaneous responses to locomotive braking commands throughout an entire train. While some types of ECP brake systems overlay the air brake system, the integrative functions of ECP brakes essentially require the entire train be equipped with operable ECP brakes if the system is to be effective. Except in very rare circumstances where the railroads are capable of keeping and maintaining captive unit train fleets, railroads in the U.S. have not implemented ECP brake systems into their operations.

PHMSA previously considered and adopted ECP brake requirements for a limited subset of HHFTs in its final rule on ''Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains,'' (HM–251; 80 FR 26643, May 8, 2015), based on the potential benefits of those trains' being operated effectively as a captive fleet. However, a subsequent re-evaluation of the HM–251 ECP brake requirements found that even the ''captive'' unit train configurations operating with ECP brakes are not cost-beneficial in the HHFT environment. (HM–251F; 83 FR 48393; Sep. 25, 2018). As a result, PHMSA removed requirements pertaining to ECP brake systems on high-hazard flammable unit trains.[38] PHMSA relies on the analysis in HM–251F to inform its decision in this final rule to not require ECP brakes on trains transporting LNG.

While PHMSA is not implementing ECP brake requirements, both agencies recognize the importance of advanced braking for trains transporting large quantities of LNG. As result, PHMSA is requiring advanced braking in the form of a two-way EOT device or linked and operational DP system located at the rear of the train. The two-way EOT device or DP system at that rear of the train is more effective than conventional brakes because the rear cars can receive the emergency brake command more quickly, which allows the back of the train to start braking quicker than if the train was only equipped with conventional air brakes. This can reduce stopping distances and lessen in-train forces that can cause or contribute to the severity of certain derailments.

The action taken by PHMSA in this final rule, requiring the use of a two-way EOT device or DP unit at the end of the train for a single train with 20 or more loaded tank cars of LNG in a continuous block or a single train carrying 35 or more loaded tank cars of LNG throughout the train, is consistent with the comments of NTSB, Members of the New Jersey Senate and Assembly, and the Attorneys General for various States. It matches the current requirements for HHFTs, which apply to Class 3 flammable liquids that are transported in a single block of twenty cars or 35 cars dispersed throughout a single train. Given the comments received and the similarity in risk profiles with HHFTs, PHMSA and FRA have determined that the requirement for a two-way EOT device or a DP system in the rear of the train is an acceptable safety measure.

Regarding rail routing requirements, PHMSA agrees that requiring additional planning and route analysis will provide safety benefits to the transportation of LNG by rail. The routing requirement will reduce the severity of the consequences of a derailment by requiring that railroads transport LNG on the safest route available to them.

Accordingly, PHMSA is amending § 172.820 to require that a train carrying LNG in a rail tank car be subject to the additional planning requirements of that section. This change will require rail carriers to compile annual data on shipments of LNG and use the data to analyze safety and security risks along rail routes where LNG is transported, assess alternative routing options, and make routing decision based on those assessments.

Regarding the risk of terrorism, 49 CFR part 172, subpart I—Safety and Security Plans, prescribes security requirements for shippers and carriers while a hazardous material is in transportation. Flammables (*e.g.,* LNG) transported in large bulk quantities (*i.e.,* 3,000 liters [792 gallons]) in a single packaging such as a tank car are subject to requirements for development and implementation of plans to address security risks, including preventing unauthorized access to the material, providing for en route security, and personnel security. PHMSA believes these existing requirements adequately address the security risks associated with the transportation of LNG by rail. Please see additional discussion of existing security planning and rail routing requirements in *Section III. A.* ''*Existing HMR Requirements for Rail Transport of Flammable Cryogenic Material.*''

2. Maximum Train Length/Weight

Some commenters suggested limiting the number of LNG tank cars in a train; however, no commenters provided specific recommendations on what would constitute the preferred maximum number of cars. The National Association of State Fire Marshals (NASFM) noted that although 19 cars of LNG would not trigger the ''Key Train'' requirements, it would be a large enough quantity to present a significant hazard.

AAR noted that research [39] on the safety impact of operating so-called ''long'' trains suggests that there is no increased risk of derailment, further commenting that the use of fewer, longer trains may reduce derailment rates. AAR further stated that PHMSA should not create a limit on train length within the context of this rulemaking.

Others expressed concern that these tank cars could damage and degrade train tracks, leading to potential future derailments. Additionally, a few commenters noted that PHMSA and FRA should assess and fix damaged

[37] 49 CFR part 232.

[38] The HM–251 final rule defined a ''high-hazard flammable unit train'' (HHFUT) as a train comprised of 70 or more loaded tank cars containing Class 3 flammable liquids.

[39] *See* footnote 9, page 3—*https://www.regulations.gov/document?D=PHMSA-2018-0025-0209.*

railroad tracks prior to making any determination on whether it is safe to transport LNG by rail.

PHMSA Response

PHMSA appreciates comments regarding potential limitation of maximum weight and length for trains containing LNG. PHMSA has determined that there should not be a maximum for either in this rulemaking. PHMSA notes that the HMR do not limit the number of shipments a shipper can offer into transportation, and do not restrict the number or type of hazardous materials rail cars a carrier can transport in a train. PHMSA and FRA believe that train length is best determined by individual railroads. The function of determining an individual railroad's appropriate train operating lengths is based on multiple factors. The railroads are best positioned to determine the appropriate train lengths and weight based on multiple factors including, but not limited to, the following: Route characteristics, train make-up, train dynamics, and crew training and experience. Furthermore, FRA notes that damage and degradation to railroad tracks due to the transport of DOT–113C120W9 tank cars is unlikely. All routes used to transport hazardous materials have rail infrastructure to handle trains with rail cars with a GRL of 286,000 pounds. Railroads execute a track and rail integrity inspection program that exceed the minimum Federal requirements. In addition, they are implementing technology that enables the inspection of more miles of track per day and identifies defects with greater reliability.

3. Speed Restrictions/AAR Circular OT–55

PHMSA received several comments recommending stricter regulations regarding the transport of LNG by rail, including speed restrictions and other operational controls. Numerous commenters, such as NTSB, NASFM, Delaware Riverkeeper Network, Congressman DeFazio, and the Attorneys General for various States, expressed concern that PHMSA did not propose additional safety regulations for the transport of LNG by rail in the NPRM. NASFM noted that, regardless of current industry practice, the AAR Circular OT–55 is ''recommended,'' rather than mandated by regulation. Earthjustice commented that OT–55 is insufficient to keep LNG safe, stating that there is a lack of transparency on its use. They further noted that without further analysis, PHMSA cannot confirm railroads are following OT–55. They also claimed that even if HHFT-style operational controls were put in place, the material is still too dangerous and liable to spill in the event of a derailment and potentially cause a BLEVE or vapor cloud explosion (VCE).

Several commenters, including NTSB, recommended that PHMSA implement operational controls similar to the protections currently in place for HHFTs, as provided in § 174.310.

A few commenters, including AAR and RSI–CTC, noted that they agree with PHMSA's determination that AAR's Circular OT–55 provides a ''detailed protocol establishing recommended railroad operational practices'' for transporting hazardous materials. One commenter further noted that they do not support incorporation of Circular OT–55 by reference because it would disincentivize the development of industry standards that are more rigorous than the Federal requirement. NYDOT, NYDEC, and NYDHSES commented that they would like to see the AAR Circular OT–55 incorporated into the HMR and the HHFT requirements applied to trains carrying LNG.

PHMSA Response

PHMSA notes that AAR's Circular OT–55 is a detailed protocol establishing railroad operating practices for the transportation of hazardous materials, including speed restrictions, which was developed by the rail industry through the AAR.[40] The recommended practices were originally implemented by all Class I rail carriers operating in the United States, with short-line railroads following on as signatories. Also, since Circular OT–55 is an industry practice, new safety procedures can be adopted efficiently and implemented nationally. The industry voluntary approach allows for greater flexibility to stay abreast of fast-changing technology and changes in the market, and facilitates safety by leveraging industry incorporation of OT–55 into their operating rules and cooperation with regulators versus an adversarial enforcement relationship.

Thus, PHMSA believes the operational control recommendations in AAR Circular OT–55 address safety concerns related to train movements of hazardous materials comprehensively, including train speed restrictions in Key Train configuration. OT–55 limits Key Train speed to 50 mph. PHMSA and FRA believe that this maximum speed limit is appropriate for the transportation of LNG based on its similarity to other Division 2.1 flammables, including cryogenic materials, that are allowed to be transported at a maximum speed of 50 mph, and based on the DOT Specification 113 standards. Additionally, AAR's Manual of Standards and Recommended Practices (MSRP) establishes rail equipment standards, including equipment speed restrictions, that limits tank cars (including DOT–113 tank cars) to an operating speed of 50 MPH. This speed restriction is independent of whether they are aggregated into a Key Train configuration or not.

Further, PHMSA and FRA have verified that railroads are implementing and following Circular OT–55 through their operating rules. PHMSA and FRA believe this industry standard reduces the risk of derailments and collisions and therefore decreases the risk involved in the transportation of all hazardous materials, including LNG. Please see *Section III.C.* ''*Additional Operational Controls for LNG Transportation*'' for a full discussion of the benefits of OT–55.

4. Separation Distance

Commenters, including NTSB and the Brotherhood of Locomotive Engineers and Trainmen (BLET), noted that the transportation of LNG would also increase the safety risk for train crews. The NTSB referenced two safety recommendations issued to PHMSA in response to the December 30, 2013, collision of two Burlington Northern Santa Fe (BNSF) freight trains in Casselton, North Dakota (R–17–1 and –2) that resulted in the derailment of 20 tank cars loaded with crude oil and the release of 476,000 gallons. The safety recommendations reference risks posed to train crews and the separation distance and configuration of hazardous materials cars, locomotives, and occupied equipment to ensure the protection of train crews during both normal operations and accident conditions. In the comment to the NPRM, the NTSB urged PHMSA to implement appropriate train crew separation distance requirements, as recommended by Safety Recommendations R–17–1 and –2, issued March 9, 2017. Specifically, the Safety Recommendations are:

R–17–01

Evaluate the risks posed to train crews by hazardous materials transported by rail, determine the adequate separation distance between hazardous materials cars and locomotives and occupied equipment that ensures the protection of train crews during both normal operations and accident

[40] Circular OT–55, ''Recommended Railroad Operating Practices for Transportation of Hazardous Materials,'' *https://www.railinc.com/rportal/documents/18/260773/OT-55.pdf.*

conditions, and collaborate with the Federal Railroad Administration to revise 49 Code of Federal Regulations 174.85 to reflect those findings.

R–17–02

Pending completion of the risk evaluation and action in accordance with its findings prescribed in Safety Recommendation R–17–01, withdraw regulatory interpretation 06–0278 that pertains to 49 Code of Federal Regulations 174.85 for positioning placarded rail cars in a train and require that all trains have a minimum of five nonplacarded cars between any locomotive or occupied equipment and the nearest placarded car transporting hazardous materials, regardless of train length and consist.[41]

AAR commented that there should not be additional buffer car requirements for trains transporting LNG or any other hazardous material. They further noted that it is not justified from a safety and risk standpoint.

PHMSA Response

PHMSA has initiated a research project in coordination with the Volpe Center to address NTSB Safety Recommendations R–17–1 and –2. This effort will result in a report that identifies gaps in the existing studies, areas for further research, and what conclusions can be drawn collectively from the existing knowledge base, if any. PHMSA may consider changes to the separation distance requirements in § 174.85 of the HMR for placarded rail cars and tank cars in mixed commodity freight train and unit train configurations pending the outcome of the study. However, PHMSA is not amending the separation distance requirement in this final rule at this time. *See Section III.C. ''Additional Operational Controls for LNG Transportation''* for further discussion of operational controls include consideration of separation distances.

PHMSA and FRA collaborated under the scope of the Rail Safety Advisory Committee Hazardous Materials Issues Working Group Task No. 15–04 to address the issue of separation distance. Ultimately, due to an absence of consensus of the Working Group participants, as well as a lack of established incident data, the members did not reach agreement on a change to the existing regulation governing hazardous materials in train separation distances. Moreover, PHMSA worked with the Volpe Center in its review of rail accidents occurring between 2006 and 2015 where there was a release of hazardous materials near the head end of the train (occupied locomotive). The study found no reported crew injuries and therefore no injuries that were potentially preventable with additional buffer cars.

5. PHMSA Determination Regarding Operational Controls

The existing structure of the HMR—to include requirements for operational controls—provides for the safe transportation of all hazardous materials. In the NPRM, PHMSA and FRA considered additional operational controls specific to LNG, such as mirroring the operational controls adopted for HHFTs,[42] adopting OT–55 or ''Key Train'' requirements into the HMR, limiting train length, or requiring controls for train composition, speed, braking, and routing.

PHMSA acknowledges the concerns about relying on a widely adopted, voluntary industry standard, rather than imposing regulatory requirements. After internal review and in consideration of certain substantive comments, PHMSA is requiring a two-way EOT device or DP on the rear of any train consisting of 20 or more loaded tank cars of LNG in a continuous block or 35 or more loaded tank cars of LNG throughout the train. Further, PHMSA is requiring that each rail car of LNG must be remotely monitored for pressure and location. Finally, trains consisting of an LNG tank car are subject to route planning and routing analysis requirement. PHMSA believes these operational controls, in conjunction with what is already required under the HMR and the ''Key Train'' requirements in Circular OT–55, will ensure the safe transportation of LNG. PHMSA and FRA have verified that railroads are following and implementing Circular OT–55 through incorporation into their operating rules. PHMSA does not believe that explicit speed restrictions are necessary given the widespread adoption of Circular OT–55. PHMSA and FRA expect that Circular OT–55 will be evaluated by the rail industry regularly and that additional operational safety measures beyond the minimum requirements of the HMR will be included to address operational concerns, as appropriate. FRA actively works with AAR's Hazardous Materials Committee, which is responsible for reviewing and updating of OT–55. The Committee reviews OT–55 annually and determines if an update is warranted. If a change to OT–55 is needed, the Committee will update the document accordingly and will published it as an AAR Casualty Prevention Circular (CPC).

C. Environmental Impacts

PHMSA received many comments recommending further analysis of the environmental impacts associated with this rulemaking. Please refer to the Final Environmental Assessment for discussion and response to comments.

D. Economic Analysis

PHMSA received several comments related to the economic analysis of the rulemaking. Please refer to the Final Regulatory Impact Analysis (RIA) for discussion and response to comments.

E. Emergency Response

Several commenters expressed concern about the perceived emergency response ramifications associated with the transportation of LNG by rail tank car. PHMSA has sorted these into the following subtopics: Training for Emergency Responders, Current Emergency Planning, Evacuation Distances, and Modeling Availability.

1. Training for Emergency Responders

Several commenters are concerned that emergency responders lack the training and expertise to respond to an LNG tank car incident, especially in unit train configurations. They commented that the current emergency response requirements may be insufficient to address an incident involving LNG, including the potential for a BLEVE in accident conditions. The Center requested proper training and notification of local responders to the presence of LNG trains. NYDOT, NYDEC, NJDEP, and NYDHSES suggested that PHMSA provide specific training, resources, and support to emergency response personnel, including cooperation with State fire training agencies to ensure training is consistent, effective, and readily available as a requirement in the final rule, similar to the special permit. NFPA cited previous comments they have submitted to regulatory actions regarding emergency response resources. Specifically, NFPA stated that adding a flammable cryogenic material, like LNG, to the existing HHFT rail shipments posed further challenges to the capabilities and resources for local responders. IAFC recommended that PHMSA work with shippers and carriers to develop and deliver critical product, container and emergency response information, and related training materials for the emergency planning and response communities. Furthermore, the Governor of Washington State, on behalf of

[41] ''Consist'' means the group of rail cars that make up the train.

[42] As defined in § 171.8, a high-hazard flammable train means a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist.

Washington State, contended that the NPRM did not address crew training and emergency response.

PHMSA Response

PHMSA agrees that proper training and information sharing are necessary ingredients in promoting a safety transportation system and is committed to ensuring emergency responders have the information and tools they need to respond to hazardous materials incidents safely. First, PHMSA notes that Class I railroads typically provide and sponsor training for emergency responders along their routes. Additionally, while large-scale LNG incident response training is available through various organizations,[43] the currently available training is not specific to rail transportation, and PHMSA and FRA are working jointly with relevant industry experts to ensure the availability of appropriate training resources for emergency responders that include rail-specific information. For example, FRA has already provided grant funding to TRANSCAER® to develop and refine LNG by rail emergency response training.[44] Additionally, PHMSA is developing a Commodity Preparedness and Incident Management Reference Sheet similar to that which was created for crude oil transportation. This reference sheet will provide emergency response organizations with a standard incident management framework based on pre-incident planning, preparedness principles, and best practices. Furthermore, it will address transportation safety and precautions; hazard assessment and risk; rail safety procedures; logistics; and the tools, equipment, and resources necessary to prepare for and respond to incidents.

PHMSA required in DOT–SP 20534 that the grantee provide training, conforming to NFPA 472, to emergency response agencies that could be affected between the authorized origin and destination. However, due to the ongoing efforts to ensure adequate emergency response training described above, such a requirement is not necessary in this final rule.

PHMSA is also engaged in outreach activities to educate and gain input from emergency responders directly. In October 2019, PHMSA and the Federal Emergency Management Agency (FEMA) National Fire Academy (NFA) held a Town Hall Meeting in Lancaster County, Pennsylvania.[45] The purpose of the Town Hall Meeting was to seek input from and note concerns of the emergency preparedness community and its stakeholders in the mid-Atlantic region—specifically, Pennsylvania and New Jersey, related to LNG transportation. The meeting consisted of a series of technical presentations on LNG transportation risks and incident response protocols. Then, attendees participated in open discussions related to the topic of general rail transportation of LNG. While attendees provided general inputs on issues related to improving the overall effective response capability in the event of a rail incident of LNG, there was no heightened concern regarding the commodity or mode of transportation. PHMSA found that the emergency responders in attendance were well oriented to the challenges of LNG incident response, as they already have LNG transiting through their communities in other modes of transportation and have improved and adjusted their plans to include LNG.

PHMSA is committed to furthering engagement with emergency responders throughout the country regarding the transportation of LNG by rail through various forms of outreach, to include additional Town Hall Meetings, participation at the annual IAFC conference, trainings, and webinars.

2. Current Emergency Planning

Numerous commenters, to include The Village of Barrington, Illinois, expressed concern for the safety of emergency responders. Several individuals stated their belief that current emergency response plans may be insufficient to address a rail incident involving LNG, further noting that an LNG train derailment could cause severe damage to the surrounding area and that first responders would be unable to control any type of fire or explosions. Additionally, some commenters expressed specific concern that there is no way to extinguish an LNG fire, with the only option to let the fire burn out.

Additionally, the NJDEP requested that emergency response plans be in place to prepare local responders better. They also requested that the emergency response plans include the route and an alternative route analysis, developed with the State and local emergency responders impacted, identifying all sensitive receptors within the 1-mile buffer of the route and any alternative routes, with plans on how to protect public health and safety and the environment. They stated that this information should be shared with the States, providing an opportunity for States to comment on routes and planning.

PHMSA Response

PHMSA directs grant programs that are designed to improve hazardous materials safety. For example, the HMEP grants to States, Territories and Native American tribes enhance their emergency response capabilities when dealing with hazardous materials related transportation incidents. The grants, authorized under 49 U.S.C 5116, assists each recipient in performing their hazardous materials response duties and aid in the development, implementation, and improvement of emergency plans for local communities and training for emergency responders to help communities prepare for a potential hazardous materials transportation incident. The hazmat safety grant programs have helped to foster partnerships with State and local communities through ensuring emergency responders are prepared and trained to respond properly to hazmat transportation incidents nationwide. PHMSA believes that these efforts will prepare emergency responders for the risks regarding LNG transportation. PHMSA will continue to assess the effectiveness of these programs and the preparedness of emergency responders. As previously noted, FRA has provided grant funding to TRANSCAER® to develop and refine LNG emergency response training.

Finally, as discussed in Section III of this final rule, PHMSA is revising § 172.820(a) to add a condition requiring any rail carrier transporting a quantity of LNG in a rail tank car to comply with the additional safety and security planning requirements for transportation by rail, which means the rail carrier is subject to collecting commodity data, performing a route analysis, and determining alternative routes. We are further revising the additional planning requirements to add a new condition for rail carriers to factor in transport of LNG to a routing analysis prior to the onset of transport of any loaded tank car of LNG. Once transport of LNG begins for a carrier, it can revert to the standard requirement to compile commodity flow data no later than 90 days after the end of each calendar year and use that data in analyzing the safety and security risks for the transportation

[43] For example, the following organizations provide LNG response training: Texas A&M Extension Service (*https://teex.org/program/lng-emergency-response/*) and Northeast Gas Association (*https://www.northeastgas.org/tql-lng-safety.php*).

[44] *See https://www.transcaer.com/training/online-training-courses/seconds-count-are-you-prepared* for additional information on TRANSCAER®.

[45] *See* the *LNG by Rail Transport Town Hall Meeting Report,* at: *https://www.regulations.gov/document?D=PHMSA-2019-0100-3005.*

route(s), and subsequently identifying alternative routes.

These actions will strengthen the emergency response planning requirements and will assist in getting needed information to emergency responders.

3. Evacuation Distances

Other commenters cited concerns over the feasibility of imposing evacuation distances in an LNG accident. The IAFF commented that an LNG tank car fire would require the evacuation of all people within a 1-mile radius, stating that this would not be possible in most jurisdictions across the United States. They stated that any fire involving multiple LNG cars would place large numbers of the public at risk while depleting many communities of their emergency response resources. They further commented that consequences would be disastrous unless responders receive extensive training specific to an LNG-by-rail event. PSR commented that in the event of an LNG by rail fire and/or explosion, PHMSA would be unable to adequately define the hazard zone and the risk to nearby populations. PSR stated that first responders, health professionals, planners, and concerned citizens would not know the extent of the hazard zone or the nature and degree of risk it poses. PSR further expressed that the dangers clearly call for greater elaboration, including the response measures necessary to minimize harm and protect human life.

Additionally, the City of Zion Fire and Rescue noted that the Emergency Response Guidebook (ERG) uses the same response guidance for LNG and LPG. They stated that a 1-mile evacuation radius would be inadequate for a large LNG fire and that it would not be feasible to implement a larger evacuation distance. Finally, Earthjustice expressed its belief that Sandia and Lawrence Livermore National Lab testing noted that methane fires behave differently than other hydrocarbon fires, and that LNG has a potential for a ''wider than anticipated vapor cloud.''

PHMSA Response

PHMSA disagrees that the 1-mile evacuation distance is not possible and further notes that LNG is currently authorized for transportation by cargo tank and that the recommended 1-mile evacuation distance for LNG tank car fires is consistent with response guidance for cargo tank fires involving LNG. Furthermore, ERG recommends a 1-mile evacuation distance for many hazardous materials; therefore, emergency responders are familiar with this recommended distance, having used this guidance for decades. Additionally, PHMSA updates the ERG regularly in consultation with the response community and other experts, and adjusts recommended protective action distances as part of this process.

PHMSA and FRA are aware of, and have extensively reviewed, the available studies on LNG pool fires and evacuation distances. Specifically, PHMSA has reviewed studies conducted by Sandia National Laboratory [46] for DOE, a study conducted by ABSG for FERC [47] on the hazard characteristics of LNG released over water, and a study on LNG pool fires on land.[48]

The purpose of the ERG and the evacuation distances contained therein is to assist responders in making initial decisions upon arriving at the scene of a hazardous materials transport incident. The ERG should not be considered as substitutes for emergency response training, knowledge, experience, or sound judgment. The ERG also cannot address all possible circumstances that may be associated with a hazardous material release incident. Additionally, each guide page within the ERG provides guidance for responding to incidents involving multiple different but related hazardous materials. In the current 2016 edition of the ERG, LNG has been assigned to Guide 115, ''Gases—Flammable (Including Refrigerated Liquids).'' Guide 115 provides generalized response recommendations for over 100 different hazardous materials. Therefore, this guide page should only be used until a specific incident can be assessed and more appropriate response measures implemented.

Based on PHMSA's review of available literature on the properties of LNG releases, the current evacuation distances are appropriate. Therefore, PHMSA will make no change to the current evacuation distances for LNG.

4. Modeling Availability

The Delaware Riverkeeper Network expressed concern that there are no publicly available modeling estimates by PHMSA or private consultants on the downwind distances for an LNG by rail release and how it can travel into trackside communities. They further commented that there is a need for candid emergency event training materials for rail workers and local emergency responders.

PHMSA Response

PHMSA notes that various software programs are available to model the dispersion of gases, including LNG. Moreover, PHMSA sponsored a study by the UK Health and Safety Laboratory to develop a Model Evaluation Protocol that can be used to evaluate the suitability of vapor dispersion models for predicting hazard ranges associated with large spills of LNG.[49] Finally, the ERG provides an initial evacuation distance for flammable gases including LNG.[50] Therefore, PHMSA believes that there are sufficient tools available to the emergency response community to ensure adequate modeling in the event of an incident.

5. PHMSA Determination Regarding Emergency Response

The existing structure of the HMR—to include requirements for security plans, emergency response information, and training—provides for the safe transportation of all hazardous materials. Notably, 49 CFR part 172, subpart G sets forth the applicability and requirements for emergency response information which must be made immediately available to emergency responders. The HMR currently require the following information to accompany a shipment of LNG by rail:

(1) Immediate hazards to health;

(2) Risks of fire or explosion;

(3) Immediate precautions to be taken in the event of an accident or incident;

(4) Immediate methods for handling fires;

(5) Initial methods for handling spills or leaks in the absence of fire; and

(6) Preliminary first aid measures.

PHMSA believes that the current requirements for emergency response information are appropriate for future movement of LNG by rail. Additionally, PHMSA directs comprehensive grant programs that are designed to improve hazardous materials safety. The hazmat safety grant programs have helped to foster partnerships with local communities and universities to provide resources for emergency preparedness and the implementation of best

[46] *https://www.nrc.gov/docs/ML0933/ML093350855.pdf.*

[47] *https://www.ferc.gov/industries/gas/indus-act/lng/cons-model/cons-model.pdf.*

[48] *https://www.researchgate.net/publication/327900878_Experimental_Study_of_LNG_Pool_Fire_on_Land_in_the_Field.*

[49] *Evaluating vapor dispersion models for safety analysis of LNG facilities.* M.J. Ivings, SE Grant, S.F. Jagger, C.J. Lea, J.R. Steward and D.M. Webber. (September 2016). *https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Hazardous-materials/RFLNGDispersionModelMEP.ashx.*

[50] *See* section ''*III. E. 3, Evacuation Distances*'' for further discussion.

practices regarding hazardous materials safety nationwide.

F. Comments of General Opposition

PHMSA received hundreds of comments expressing general opposition to the overall intent of the NPRM and the provisions proposed therein to authorize the transportation of LNG in rail tank cars. Many of these commenters voiced general concern about the public health, safety, and/or environmental risks of trains carrying bulk quantities of LNG. There was also opposition to the overall timeline of the rule, and PHMSA's authority to issue it.

Specifically, Theresa Pugh Consulting LLC opposed the transportation of LNG by rail in the lower 48 States, noting that Alaska may be an exception because of extreme circumstances that might require the need for LNG transportation by tank car. PSR and various others expressed concern that LNG by rail would pose risks to people living in proximity to rail lines, especially in densely populated urban and suburban areas. PSR specifically stated that it views issuing a national approval for LNG by rail as premature.

The Guardians of Martin County, Inc. and the Alliance for Safe Trains both expressed concern over LNG trains sharing the same track as passenger trains in Florida. The Guardians of Martin County, Inc. noted the age of infrastructure and population density of the area these trains would pass through. The Alliance for Safe Trains noted that a high-speed rail project will be sharing tracks or riding on parallel tracks to trains carrying LNG. Various commenters, including the Surfrider Foundation, commented that the proposals in the NPRM are extremely dangerous. The Surfrider Foundation stated that LNG is a flammable, volatile, and hazardous material with numerous examples of accidents and safety issues. The Surfrider Foundation further stated that one government study put the hazard range for a vapor cloud at more than 1.5 miles.

The Delaware Riverkeeper Network disagreed with the language in AAR's petition suggesting that DOT and Transport Canada maintain consistent requirements for LNG by rail. They stated that there is insufficient justification to change the HMR because no rail cars of LNG have been transported in Canada to date.

PHMSA Response

PHMSA notes that many of these comments did not contain sufficient information or supporting rationale that could be assessed to determine the provisions authorized in this rulemaking. PHMSA agrees with commenters that the risks related to the transportation of LNG by rail should be assessed and properly mitigated to ensure safety for the public and the environment. As outlined above, PHMSA has assessed the risks posed by the transportation of LNG by rail. PHMSA finds that the design elements of the DOT–113C120W9 rail tank car, the operational controls required in this final rule, combined with the existing HMR requirements that would apply and the voluntary industry standards in AAR Circular OT–55, will provide a safe transportation environment for LNG by rail.

PHMSA acknowledges commenters' general opposition to the transport of LNG on routes that bring this material into close proximity to the public. To address this concern, PHMSA is applying the existing additional planning requirements to the transport of LNG in rail tank cars, which include routing analysis requirements, to factor the risk of LNG transport in route planning. In this final rule, there is no geographical limit to LNG train operations, making routing analysis beneficial. This amendment will require railroads to evaluate safety and security risk factors when assessing the potential routes to be used to transport LNG. The 27 safety and security risk factors required by the route risk assessment provide a robust framework for carrier evaluation of the routes considered for use in LNG transportation.

Trains consisting of, and in some cases made up entirely of, rail cars carrying hazardous materials are moved on the same rail lines as passenger trains across the country. For densely-populated passenger train corridors (*e.g.,* Northeast Corridor and Florida's east coast) railroads typically operate freight trains (with and without hazmat) at night to maximize efficiency and fluidity (*i.e.,* freight trains will not slow down passenger trains, and freight trains will not be placed in sidings to make way for passenger trains). On cross country routes the passenger and freight trains meet with greater frequency. In both cases, the passenger and, more likely, freight trains will be operating under positive train control, which is specifically intended to prevent collisions, or incidents resulting from misaligned switches, incursions into work zones, and overspeed derailments.

G. Comments From the Puyallup Tribe

PHMSA received comments from the Puyallup Tribe of Tacoma, Washington contending that the rulemaking would have potential direct and disparate impacts on the Tribe and its members. The Puyallup Tribe submitted that the rulemaking will result in rail transportation of LNG crossing its reservation (located within the metropolitan area of Tacoma, Washington) and adjacent areas when travelling to and from Puget Sound Energy's planned Tacoma LNG facility. The Puyallup Tribe asserted that rail traffic entails a number of hazards for the Tribe and its members, including the following: Safety risks associated with the release of LNG being transported by rail; degradation of air quality in the area due to more diesel trains operating in the vicinity of the reservation; an increase in rail traffic that would frustrate quiet enjoyment of Tribal lands; and increased exposure to rising sea levels from climate change.

At the Puyallup Tribe's request, PHMSA personnel held a meeting with representatives of the Puyallup Tribe at PHMSA's headquarters in Washington, DC on February 12, 2020. Attendees at the meeting discussed the Puyallup Tribe's concerns regarding the Tacoma LNG facility, as well as the Puyallup Tribe's written comments submitted in the docket for this rulemaking. A summary of the February 12, 2020 meeting has been posted to the docket. PHMSA contacted representatives of the Puyallup Tribe and made itself available for additional meetings.

PHMSA Response

PHMSA submits that those of the Puyallup Tribe's concerns predicated on potential rail transport of LNG to and from Puget Sound Energy's Tacoma LNG facility are inapposite. The Tacoma LNG facility is regulated by Washington State and not PHMSA. Further, it does not appear that rail transportation of LNG to the Tacoma LNG facility is currently permitted by the terms of that facility's State authorization; rather, Condition 41 of the Puget Sound Air Agency Authorizing Order specifies that the ''sole source of natural gas supply used in all operations'' at the Tacoma LNG Facility will be from Canada via pipeline.[51] Nor does the Authorizing Order seem to contemplate rail transportation of LNG from that facility; rather, LNG transported from that facility will be transported by truck, or will be converted to natural gas for supply to customers via Puget Sound

[51] *See* Puget Sound Clean Air Agency, Order of Approval No. 11386 (Dec. 10, 2019) (Authorizing Order); Final Supplemental Environmental Impact Statement: Proposed Tacoma LNG Project at (Mar. 2019) (Tacoma LNG FSEIS). These and other documents in the Puget Sound Clean Air Agency docket can be found at the following link: *https://pscleanair.gov/460/Current-Permitting-Projects.*

Energy's natural gas pipeline distribution system.[52] Indeed, schematics of the Tacoma LNG facility within the Puget Sound Air Agency docket suggest that rail infrastructure neither exists nor is contemplated at the site.[53]

H. Comments Beyond the Scope of This Rulemaking

PHMSA also received miscellaneous comments opposing the bulk transport of LNG by any mode of transportation (to include highway or pipeline), as well as numerous comments pertaining to the ethical ramifications of fossil fuel extraction and usage. Commenters questioned the ethics of, and requested an end to, fracking, use of fossil fuels, and the practice of transporting coal in open railcars near waterways. Commenters also expressed concerns with LNG trains sharing railways with high-speed trains, and high-speed trains having at grade crossings citing safety concerns. These comments either did not provide recommendations for regulatory action, exceeded the scope of PHMSA's authority, or were not within the scope of this rulemaking.

V. Section-by-Section Review

The following is a section-by-section review of the amendments in this final rule.

A. Section 172.101

Section 172.101 provides the HMT and instructions for its use. PHMSA is amending the entry for ''UN1972, Methane, refrigerated liquid'' in the HMT to add reference to the cryogenic liquids in (rail) tank cars packaging section—§ 173.319 in Column (8C). Additionally, PHMSA is amending the entry to add a special provision.

B. Section 172.102

Section 172.102 provides the special provisions and instructions for their applications. PHMSA is amending paragraph (c)(1) to add special provision 440. Special provision 440 requires that each tank car used to transport LNG be remotely monitored for pressure and location. Additionally, the offeror must notify the carrier if the tank pressure rise exceeds 3 psig in a 24-hour period.

C. Section 172.820

Section 172.820 prescribes additional safety and security planning requirements for transportation by rail, specifically, commodity data, a rail routing analysis, and identification of practicable alternative(s). Paragraph (a) of this section provides the applicability for when a rail carrier must comply with the requirements of this section. In this final rule, PHMSA is revising § 172.820(a) to add a condition requiring any rail carrier transporting a quantity of UN1972 (''Methane, refrigerated liquid'' (cryogenic liquid) or ''Natural gas, refrigerated liquid'' (cryogenic liquid)) to comply with the additional safety and security planning requirements for transportation by rail. Further, PHMSA is revising paragraph (b) to remove the initial compliance date applicable to HHFTs as these dates have since passed (*i.e.,* rail carriers subject to the additional planning requirements because of transporting HHFTs had to complete the initial commodity flow data collection by March 31, 2016, using 2015 data), and adding a new condition for rail carriers to factor in transport of LNG (UN1972) to a routing analysis prior to the onset of transport of any loaded tank car of LNG. Once transport of LNG begins for a carrier, it can revert to the standard requirement in paragraph (b) that requires it to compile commodity flow data no later than 90 days after the end of each calendar year and use that data in analyzing the safety and security risks for the transportation route(s), and subsequently identifying alternative routes.

D. Section 173.319

Section 173.319 prescribes requirements for cryogenic liquids transported in rail tank cars. Paragraph (d) provides which cryogenic liquids may be transported in a DOT–113 tank car when directed to this section by Column (8C) of the § 172.101 HMT. PHMSA is amending paragraph (d)(2) to authorize the transport of ''Methane, refrigerated liquid'' (*i.e.,* LNG). Additionally, PHMSA is amending the Pressure Control Valve Setting or Relief Valve Setting Table in § 173.319(d)(2) to specify settings for methane in DOT–113C120W tank cars, specifically, a start-to-discharge pressure valve setting of 75 psig; a design service temperature of −260 °F; a maximum pressure when offered for transportation of 15 psig; and a filling density of 37.3 percent by weight.

E. Section 174.200

Section 174.200 prescribes the special handling requirements for Class 2 materials transported by rail. PHMSA is amending this section to include the operational requirements for trains containing tank cars of LNG. PHMSA is adding paragraph (d), which states that for a single train of 20 or more loaded tank cars of ''Methane, refrigerated liquid'' in a continuous block or a single train carrying 35 or more loaded tank cars of ''Methane, refrigerated liquid'' throughout the train, each carrier must ensure the train is equipped and operated with either an EOT device, as defined in 49 CFR 232.5, or a DP system, as defined in 49 CFR 229.5.

F. Section 179.400–5

Section 179.400–5 prescribes the material requirements for the construction of DOT–113 tank cars. Paragraph (b) states that any steel casting, steel forging, steel structural shape or carbon steel plate used to fabricate the outer jacket or heads must be as specified in AAR Specifications for Tank Cars, appendix M. PHMSA is amending this paragraph to require that for tank cars transporting ''Methane, refrigerated liquid,'' the outer shell must be made of AAR TC 128, Grade B normalized steel plate as specified in § 179.100–7(a).

G. Section 179.400–8

Section 179.400–8 prescribes the requirements for plate thickness on the DOT–113 specification tank car. Paragraph (d) states that the minimum wall thickness for the outer jacket shell, after forming, must be no less than 7/16th inch and the outer jacket heads must be no less than ½ inch thick. PHMSA is amending paragraph (d) to require DOT–113 tank cars used in LNG service to have an outer shell and tank head thickness, after forming, of 9/16th inch. Additionally, the shell and heads must be made of AAR TC 128, Grade B normalized steel plate as specified in § 179.100–7(a).

H. Section 179.400–26

PHMSA is adding § 179.400–26 to provide the authorization for a DOT–113 tank car to be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA).

I. Section 180.515

Section 180.515 discusses requirements for marking tank cars as part of their continuing qualification for service. In this final rule, PHMSA is adding the new specification suffix ''9'' to the DOT–113C120W specification to indicate compliance with enhanced outer tank steel and thickness requirements beyond the standard DOT–113C120W specification. In conformance with this change, PHMSA is adding a new paragraph (d) to § 180.515 to require that the ''9'' suffix always remain marked as part of the specification DOT–113C120W9 for these enhanced tank cars, to distinguish

[52] *See* Tacoma LNG FSEIS at 1, 2–2, 2–4 to 2–5.

[53] *See* Tacoma LNG FSEIS at Figures 1–1 and 1–2.

standard DOT–113C120W tank cars (such as those currently used to transport ethylene) from enhanced DOT–113C120W9 cars authorized for LNG. PHMSA intends this new paragraph to reduce confusion for tank car users.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is published under the authority of the Federal hazmat law. Section 5103(b) of the Federal hazmat law authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' The Secretary's authority regarding hazardous materials safety is delegated to PHMSA at 49 CFR 1.97. This rulemaking authorizes the transportation of LNG by rail in DOT–113C120W tank cars, with certain enhanced outer tank requirements, subject to all applicable requirements and certain additional operational controls.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is considered a significant regulatory action under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review'' [58 FR 51735 (October 4, 1993)], and was reviewed by the Office of Management and Budget (OMB). This rulemaking is also considered a significant rulemaking under the DOT regulations governing rulemaking procedures (49 CFR part 5). E.O. 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Similarly, DOT regulations require that regulations issued by PHMSA and other DOT Operating Administrations ''should be designed to minimize burdens and reduce barriers to market entry whenever possible, consistent with the effective promotion of safety'' and should generally ''not be issued unless their benefits are expected to exceed their costs.'' § 5.5(f)–(g).

Additionally, E.O. 12866 and DOT regulations require agencies to provide a meaningful opportunity for public participation, which also reinforces requirements for notice and comment under the APA.[54] Therefore, in the previously published NPRM, PHMSA sought public comment on revisions to the HMR authorizing the transportation of LNG by rail tank car. PHMSA also sought comment on the preliminary cost and cost savings analyses, as well as any information that could assist in quantifying the benefits of this rulemaking. Those comments are addressed, and additional discussion about the economic impacts of the final rule are provided, within the final RIA posted in the docket.[55]

This final rule adopts the proposal in the NPRM, with certain amendments, to allow the transportation of LNG by rail in an authorized tank car. Under current regulatory standards, LNG is not authorized for transportation by tank car. Therefore, this final rule is considered an enabling rule.

In promulgating this final rule, PHMSA is providing a path for potential benefits that would not otherwise be gained in the absence of this rulemaking, such as increased transportation efficiency, increased modal safety, expanded fuel usage, improved accessibility to remote regions, and increased U.S. energy competitiveness. These benefits are described qualitatively in the Final RIA. The final rule essentially prescribes packaging for a flammable cryogenic material (*i.e.,* LNG) for shippers and rail carriers who choose to transport LNG by rail. The discretionary and voluntary decision of a shipper and railroad company to transport LNG by rail, upon implementation of this final rule, requires full compliance with all existing regulations governing the transportation of flammable cryogenic materials, and the operation of freight and other non-passenger train services; as well as the additional requirements adopted under the final rule, namely, enhanced outer tank design and material standards and operational controls supplemental to the existing operational controls in the HMR.

C. Executive Order 13771

This rulemaking is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the final RIA posted in the docket.[56]

D. Executive Order 13132

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13132, ''Federalism.'' This rulemaking may preempt State, local, and Tribal requirements but does not amend any regulation that has substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

Federal hazmat law, 49 U.S.C. 5101–5128, contains express preemption provisions relevant to this proceeding. As amended by Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2319), 49 U.S.C. 5125(a) provides that a requirement of a State, political subdivision of a State, or Indian tribe is preempted—unless the non-Federal requirement is authorized by another Federal law or DOT grants a waiver of preemption under section 5125(e)—if (1) complying with the non-Federal requirement and the Federal requirement is not possible (dual compliance test); or (2) the non-Federal requirement, as applied and enforced, is an obstacle to accomplishing and carrying out the Federal requirement (obstacle test).

Additionally, 49 U.S.C. 5125(b)(1) provides that a non-Federal requirement concerning any of five subjects is preempted when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazmat law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Department of Homeland Security (covered subjects test).[57] To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' The subject areas covered under this authority are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified

[54] 5 U.S.C. 553; 49 CFR 5.5(i).

[55] *See* Docket No. PHMSA–2018–0025 at *www.regulations.gov.*

[56] *Id.*

[57] Unless the non-Federal requirement is authorized by another Federal law or DOT grants a waiver of preemption under 49 CFR 5125(e).

for use in transporting hazardous material.

This rule addresses subject items (2) and (5) above, which are covered subjects, and therefore, non-Federal requirements that fail to meet the ''substantively the same'' standard are vulnerable to preemption under the Federal hazmat law. Moreover, PHMSA will continue to make preemption determinations applicable to specific non-Federal requirements on a case-by-case basis, using the obstacle, dual compliance, and covered subjects tests provided in Federal hazmat law.

Federal preemption also may exist pursuant to section 20106 of the former Federal Railroad Safety Act of 1970 (FRSA), repealed, revised, reenacted, and recodified at 49 U.S.C. 20106, and the former Safety Appliance Acts (SAA), repealed revised, reenacted, and recodified at 49 U.S.C. 20301–20304, 20306. Section 20106 of the former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the section's ''essentially local safety or security hazard.'' The former SAA has been interpreted by the Supreme Court as preempting the field ''of equipping cars with appliances intended for the protection of employees.'' *Southern Ry. Co.* v. *R.R. Comm'n of Ind.,* 236 U.S. 439, 446 (1915). The train's power braking system is considered a safety mechanism within the terms of the former SAA. 49 U.S.C. 20302(a)(5).

E. Executive Order 13175

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' and DOT Order 5301.1, ''Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes.'' The Department assessed the impact of the rulemaking on Indian tribal governments and determined that it would not significantly or uniquely affect Tribal communities or Indian tribal governments because it neither sets national requirements for transporting LNG via rail, nor imposes substantial compliance costs on Indian tribal governments, nor mandates Tribal action.

PHMSA is committed to satisfying its obligations under E.O. 13175 and DOT Order 5301.1 related to Tribal outreach to ensure meaningful and timely engagement of Tribal governments in PHMSA rulemaking. As discussed above, PHMSA personnel have conducted a face-to-face meeting with representatives of the Puyallup Tribe to solicit their concerns during the development of this final rule. PHMSA has addressed those concerns, as well as the written comments submitted by the Puyallup Tribe, in the final rule and final EA. Further, since the February 2020 meeting with the Puyallup Tribe, PHMSA has contacted representatives of the Puyallup Tribe and extended invitations for follow-up meetings with PHMSA leadership. The Puyallup Tribe has not accepted PHMSA's invitation to conduct further meetings.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

This rulemaking complies with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), which requires agencies to consider whether a rulemaking would have a ''significant economic impact on a substantial number of small entities'' to include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. This rulemaking has been developed in accordance with Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'', and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

(1) a statement of the need for, and objectives of, the rule.

The amendments to the HMR made in this final rule, which enable LNG to be transported by rail, are intended to provide relief by authorizing the transportation of LNG in tank cars with enhanced crashworthiness features and additional operational controls with no anticipated reduction in safety. This final rule creates options for transporting LNG, which otherwise would be limited to trucks, or maritime transportation modes; or, alternately, re-gasification and movement by pipeline in a gas state. This rule enables movement by rail, thereby giving shippers an alternate mode that may offer cost or other advantages over existing permitted modes to ship LNG. It lifts the blanket prohibition on movement of LNG by rail tank cars.

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

PHMSA addressed public comments filed under the NPRM, as well as the Special Permit. The comments were addressed by topic and addressed accordingly. Please refer to *Section IV.* ''*Summary and Discussion of Comments to the Rulemaking Docket,*'' of the preamble.

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

PHMSA did not receive comments filed on behalf of the Chief Counsel for Advocacy at the Small Business Administration (SBA).

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. As far as the railroad industry, the SBA stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 1,500 employees, a ''commuter rail system'' with annual receipts of less than $16.5 million, or a contractor that performs support activities for railroads with annual receipts of less than $16.5 million.[58]

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy that formally establishes ''small

[58] U. S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes, August 19, 2019. *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019,%202019.pdf.*

entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues,[59] and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003) (codified at 49 CFR part 209, appendix C). PHMSA is using this definition for the rule.

The final rule would be applicable to all railroads, although not all requirements would be relevant to all railroads. Railroads operating on the general system are required to use two-way EOT regardless of type of load unless exempted under 49 CFR 232.407(e). Two-way EOT devices cost approximately $4,000. As stated in the Final RIA, most Class III railroads, due to their type of train operation, are not required to have two-way EOT devices, except in certain situations. FRA regulations provide exceptions from the requirement to use two-way EOT device in 49 CFR 232.407(e). For Class III railroads that would be required to install two-way EOT devises, the monetary burden of the requirement to purchase and install those devices is less than 1% of the average annual revenue of small railroad entities. Therefore, the impact of this requirement is also minimal.

As further stated in the Final RIA, there are two other types of entities that are subject to the rule in addition to railroad companies: shippers, and tank car manufacturers (to the extent of design specifications). There are three main types of shippers: oil and gas companies, chemical companies and oil and fuel logistics companies. PHMSA estimated the number of small entities that could potentially be impacted by this rule using its own registration data and the Dun and Bradstreet data.

PHMSA first queried pipeline-related entities. The SBA definition of a small entity for those business categories is set at 1,000 employees or, in the case of annual revenue thresholds, is set at $27.5 million. PHMSA applied the following NAICS codes for this analysis: 211130 Natural Gas Extraction, 213111 Drilling Oil and Gas Wells, 213112 Support Activities for Oil and Gas Operations, 325110 Petrochemical Manufacturing, 325199 All Other Basic Organic Chemical Manufacturing, and 486210 Pipeline Transportation of Natural Gas. PHMSA's queries identified a total of nine small entities: six under 213112 Support Activities for Oil and Gas Operations and three under 486210 Pipeline Transportation of Natural Gas.

PHMSA also conducted a similar but broader query of companies that may potentially ship LNG by rail using PHMSA's PDM system in conjunction with the Dun and Bradstreet data. The query identified several potential subsets of SBA-size small entities; however, there is considerable overlapping in definitions and variation in operations among the codes to render a specific number(s). One possibly relevant NAICS code for this rule is industrial gas manufacturing (NAICS 32512). This industry is comprised of establishments primarily engaged in the manufacturing of organic and inorganic gasses in compressed, liquid or solid forms. The industry has a 529 entities earning a total of almost $10 billion in annual sales in the U.S. (2018). The companies are comprised mainly of large well-established entities. A small entity within that industry has an annual revenue of $28.23 billion (2019). The cost burden to shippers of this rule consist of the purchase and installation expense of remote monitoring devices and of a thicker outer tank for DOT–113 Tank Car in LNG Service. As stated in the Final RIA, the current estimated cost of remote monitoring devices is approximately $2,400-$4,000 per car depending upon the vendor plus additional costs for monitoring software. The estimated cost of the requirement to install 9/16-inch outer shell on all DOT–113 tank cars in LNG service is an additional $15,000 to $20,000 for the additional and higher-quality steel, plus $3,000-$5,000 for additional construction expenses. The base cost of an existing 7/16-inch outer tank DOT–113 is approximately $725,000. PHMSA concludes that the impact of this rule is less than 1% of average annual revenue for these entities.

Therefore, PHMSA concludes that this rule does not impose a significant burden on small entities in this category.

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

PHMSA is revising 49 CFR 172.820 to require any rail carrier transporting a tank car quantity of UN1972 (Methane, refrigerated liquid (cryogenic liquid) or Natural gas, refrigerated liquid (cryogenic liquid)) to comply with the additional safety and security planning requirements for transportation by rail. PHMSA estimates that this rule does not impose a significant information collection and recordkeeping burdens on small entities. Please refer to *Section VI.G., ''Paperwork Reduction Act,''* of the preamble for additional information about the potential burdens associated with this requirement.

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small entities, where it is possible to do so and still meet the objectives of applicable regulatory statutes. PHMSA considered three regulatory alternatives (including a ''no action'' alternative) when developing the NPRM. The alternatives (other than the 'no action' alternative) were designed in accordance with necessary safety, engineering and operational specifications. These specifications, as such, do not provide leeway for variation of design or degrees of stringency. The chemical characteristics of LNG combined with the potential to be transported in blocks of 20 or more tank cars or unit trains require specific packaging (*i.e.* tank car) which costs approximately $750,000 per tank car according to PHMSA and FRA estimates. The operational control specifications, as mentioned above, do not impose a significant monetary burden on small entities.

Other entities subject to this rule include rail tank car manufacturers. Although PHMSA does not regulate these entities, it does regulate the design specifications of rail tank cars. PHMSA estimates there are approximately seven rail tank car manufacturers in the U.S., none of which are considered small entities. The impact of the rule, in this case, is potentially positive, since it will generate new purchase order opportunities for those entities.

[59] The Class III railroad revenue threshold is $39,194,876 or less, for 2018. (The Class II railroad threshold is between $39,194,876 and $489,935,956; and the Class I railroad threshold is $489,935,956 or more.) *See* Surface Transportation Board (STB), available at *https://www.stb.gov/econdata.nsf/d03c0c2161a050278525720a0044a825/1acf737531cf98ce8525841e0055e02e.*

G. Paperwork Reduction Act

Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. As detailed in *Section V.C.* ''*Section172.820*'', PHMSA is requiring any rail carrier transporting a tank car quantity of UN1972 (Methane, refrigerated liquid (cryogenic liquid) or Natural gas, refrigerated liquid (cryogenic liquid)) to comply with the additional safety and security planning requirements for transportation by rail. PHMSA currently accounts for burden associated with safety and security planning requirements in OMB Control Number 2137–0612, ''Hazardous Materials Security Plans.'' PHMSA estimates that this revision will lead to the following increase in burden:

Annual Increase in Number of Respondents: 0.

Annual Increase in Number of Responses: 8.

Annual Increase in Burden Hours: 677.

Annual Increase in Salary Costs: $41,170.

Under the Paperwork Reduction Act of 1995 (Pub. L. 96–511), no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. As this revision was not proposed in the NPRM, PHMSA will publish a separate 60-day and 30-day notice to provide an opportunity for public comment on the proposed estimated increase in burden.

Requests for a copy of this information collection should be directed to Steven Andrews or Shelby Geller, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone (202) 366–8553.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

I. Unfunded Mandates Reform Act

Unfunded Mandate Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector.[60] For any NPRM or final rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate of $100 million or more (or $169 million adjusted for inflation) in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.[61] A Federal mandate is defined, in part, as a regulation that imposes an enforceable duty upon State, local, or Tribal governments or would reduce or eliminate the amount of authorization of appropriation for Federal financial assistance that would be provided to State, local, or Tribal governments for the purpose of complying with a previous Federal mandate.[62]

The NPRM concluded that the rulemaking does not impose unfunded mandates because it does not result in costs of $169 million or more, adjusted for inflation, to either State, local, or Tribal governments, in the aggregate, or to the private sector and is the least burdensome alternative that achieves the objective of the rulemaking.

In response to the NPRM, Theresa Pugh Consulting, LLC argued that the UMRA requires that PHMSA analyze the costs that State, local, or Tribal governments might incur as a result of responding to potential emergencies caused by the transportation of LNG in rail tank cars.

The final rule, as revised based on comments received, does not include a Federal mandate that may result in an aggregate expenditure by State, local, and Tribal governments of $169 million or more. Additionally, the final rule does not impose a requirement on State, local, or Tribal governments, much less a requirement that the DOT can enforce. In the event State, local, or Tribal governments need additional resources to plan for a potential LNG-related accident, they may request grants from PHMSA's Hazardous Materials Emergency Preparedness funds, established under 49 U.S.C. 5116(h), to support development, improve, and carry out emergency plans.

In conclusion, this final rule does not impose unfunded mandates under the UMRA of 1995. It does not result in costs of $169 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector, and it is the least burdensome alternative that achieves the objective of the rulemaking.

J. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) implementing regulations (40 CFR part 1500–1508) require Federal agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) probable environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process (*see* 40 CFR 1508.9(b)). DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts,'' establishes departmental procedures for evaluation of environmental impacts under NEPA and its implementing regulations.

PHMSA has completed its NEPA analysis. Based on the environmental assessment, PHMSA determined that an environmental impact statement is not required for this rulemaking because it does not constitute an action meeting the criteria that normally requires the preparation of an environmental impact statement. As explained in the final EA, PHMSA has found that the selected action will not have a significant impact on the human environment in accordance with Section 102(2) of NEPA.

PHMSA issued and solicited comments on a draft EA posted to the docket along with the NPRM. The final EA and Finding of No Significant Impact has been placed into the docket addressing the comments received.

K. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *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.*

L. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (''Promoting International Regulatory Cooperation''), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches

[60] 2 U.S.C. 1531.

[61] *Id.* at 1532.

[62] *Id.* at 658(5)(A), 1555.

are unnecessary or may impair the ability of American business to export and compete internationally. *See* 77 FR 26413 (May 4, 2012). In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public. PHMSA has assessed the effects of the rulemaking to ensure that it does not cause unnecessary obstacles to foreign trade. Insofar as the final rule authorizes rail transportation of LNG to domestic U.S. and other North American markets, it would promote foreign trade. Further, the final rule's authorization of rail transportation of LNG aligns U.S. practice with Transport Canada regulations permitting rail transportation of LNG. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

M. Executive Order 13211

Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') [66 FR 28355; May 18, 2001] requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Under the executive order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, Advance NPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies); or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.

This final rule is a significant action under E.O. 12866 because OIRA believes it raises novel, legal, and policy issues arising out of legal mandates; however, it is expected to have an annual effect on the economy of less than $100 million. Further, this action is not likely to have a significant adverse effect on the supply, distribution or use of energy in the United States. The Administrator of OIRA has not designated the final rule as a significant energy action. For additional discussion of the anticipated economic impact of this rulemaking, please review the final RIA.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Incorporation by reference, Radioactive materials, Railroad safety.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA amends 49 CFR chapter I as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 2. In § 172.101, revise the table entry for ''Methane, refrigerated liquid *(cryogenic liquid) or* Natural gas, refrigerated liquid *(cryogenic liquid), with high methane content)*'' (UN1972) to read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (*see* §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*		*		*	*		*		*		
	Methane, refrigerated liquid *(cryogenic liquid)* or Natural gas, refrigerated liquid *(cryogenic liquid), with high methane content).*	2.1	UN1972		2.1	T75, TP5, 440.	None	None	318, 319	Forbidden	Forbidden	D	40
	*	*		*		*	*		*		*		

■ 3. In § 172.102, amend paragraph (c)(1) by adding special provision 440 under ''Code/Special Provisions'' to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

440 When this material is transported by tank car, the offeror must ensure each tank car is remotely monitored for pressure and location. Additionally, the offeror must notify the carrier if the tank pressure rise exceeds 3 psig over any 24-hour period.

* * * * *

■ 4. In § 172.820, revise paragraphs (a) and (b)(1) to read as follows:

§ 172.820 Additional planning requirements for transportation by rail.

(a) *General.* Each rail carrier transporting in commerce one or more of the following materials is subject to the additional safety and security planning requirements of this section:

(1) More than 2,268 kg (5,000 lbs.) in a single carload of a Division 1.1, 1.2 or 1.3 explosive;

(2) A quantity of a material poisonous by inhalation in a single bulk packaging;

(3) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this subchapter;

(4) A high-hazard flammable train (HHFT) as defined in § 171.8 of this subchapter; or

(5) A quantity of UN1972 (Methane, refrigerated liquid or Natural gas, refrigerated liquid) when transported in a rail tank car.

(b) * * *

(1) Commodity data must be collected by route, a line segment or series of line segments as aggregated by the rail carrier. Within the rail carrier selected route, the commodity data must identify the geographic location of the route and the total number of shipments by UN identification number for the materials specified in paragraph (a) of this section.

(i) A rail carrier subject to additional planning requirements of this section based on paragraph (a)(5) of this section that has yet to transport UN 1972, must factor in planned shipments of UN 1972 to the commodity data for use in the paragraph (c) route analysis prior to initial transport of the material.

(ii) [Reserved]

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 5. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 6. In § 173.319, revise paragraph (d)(2) to read as follows:

§ 173.319 Cryogenic liquids in tank cars.

* * * * *

(d) * * *

(2) *Ethylene, hydrogen (minimum 95 percent parahydrogen), and methane, cryogenic liquids* must be loaded and shipped in accordance with the following table:

TABLE 1 TO § 173.319(D)—PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum start-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)				
	Ethylene	Ethylene	Ethylene	Hydrogen	Methane
17				6.60	
45	52.8				
75		51.1	51.1		37.3.
Maximum pressure when offered for transportation.	10 psig	20 psig	20 psig		15 psig.
Design service temperature	Minus 260 °F	Minus 260 °F	Minus 155 °F	Minus 423 °F	Minus 260 °F.
Specification (*see* § 180.507(b)(3) of this subchapter).	113D60W, 113C60W	113C120W	113D120W	113A175W, 113A60W	113C120W9.

Note: For DOT 113 cryogenic tank cars, delimiters indicate the following:
A—authorized for minus 423 °F loading;
C—authorized for minus 260 °F loading;
D—authorized for minus 155 °F loading.
The specification suffix ''9'' indicates the tank car is equipped with (minimum) 9/16 inch TC 128B normalized steel outer jacket and tank heads.

* * * * *

PART 174—CARRIAGE BY RAIL

■ 7. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 33 U.S.C. 1321; 49 CFR 1.81 and 1.97.

■ 8. In § 174.200, add paragraph (d) to read as follows:

§ 174.200 Special handling requirements.

* * * * *

(d) For a single train of 20 or more loaded tank cars of Methane, refrigerated liquid in a continuous block or a single train carrying 35 or more loaded tank cars of Methane, refrigerated liquid throughout the train consist, each carrier must ensure the train is equipped and operated with either a two-way end-of-train (EOT) device, as defined in 49 CFR 232.5, or a distributed power (DP) system, as defined in 49 CFR 229.5.

PART 179—SPECIFICATIONS FOR TANK CARS

■ 9. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 10. In § 179.400–5, revise paragraph (b) to read as follows:

§ 179.400–5 Materials.

* * * * *

(b)(1) Any steel casting, steel forging, steel structural shape or carbon steel plate used to fabricate the outer jacket or heads must be as specified in AAR Specifications for Tank Cars, appendix M.

(2) For DOT–113C120W9 tank cars, the outer jacket shell and outer jacket heads must be made of AAR TC–128, Grade B normalized steel plate as specified in § 179.100–7(a).

* * * * *

■ 11. In § 179.400–8, revise paragraph (d) to read as follows:

§ 179.400–8 Thickness of plates.

* * * * *

(d)(1) The minimum wall thickness, after forming, of the outer jacket shell may not be less than 7/16 inch. The minimum wall thickness, after forming, of the outer jacket heads may not be less than ½ inch and they must be made from steel specified in § 179.16(c).

(2) For DOT 113C120W9 tank cars, the minimum wall thickness of the outer jacket shell and the outer jacket heads must be no less than 9/16 inch after forming, and must be made of AAR TC–128, Grade B normalized steel plate.

(3) The annular space is to be evacuated, and the cylindrical portion of the outer jacket between heads, or between stiffening rings if used, must be designed to withstand an external pressure of 37.5 psig (critical collapsing pressure), as determined by the following formula:

$$P_c = [2.6E(t/D)^{2.5}]/[(L/D) - 0.45(t/D)^{0.5}]$$

Where:

P_c = Critical collapsing pressure (37.5 psig minimum) in psig;

E = modulus of elasticity of jacket material, in psi;

t = minimum thickness of jacket material, after forming, in inches;

D = outside diameter of jacket, in inches;

L = distance between stiffening ring centers in inches. (The heads may be considered as stiffening rings located ⅓ of the head depth from the head tangent line.)

* * * * *

■ 12. Add § 179.400–26 to read as follows:

§ 179.400–26 Approval to operate at 286,000 gross rail load (GRL).

A tank car may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). *See* § 179.13.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 14. In § 180.515, add paragraph (d) to read as follows:

§ 180.515 Markings.

* * * * *

(d) The specification marking for DOT 113 tank cars built in accordance with the DOT 113C120W9 specification must display the last numeral of the specification number (*i.e.,* ''DOT 113C120W9'').

Issued in Washington, DC, on June 19, 2020, under authority delegated in 49 CFR 1.97.

Howard R. Elliott,

Administrator, Pipeline and Hazardous Materials Safety Administration.

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Federal Energy Regulatory Commission

18 CFR Part 12

Safety of Water Power Projects and Project Works; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 12

[Docket No. RM20–9–000]

Safety of Water Power Projects and Project Works

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend its regulations governing the safety of hydropower projects licensed by the Commission under the Federal Power Act. These regulations are intended to promote the safe operation, effective maintenance, and efficient repair of licensed hydropower projects and project works to ensure the protection of life, health, and property in surrounding communities. Specifically, the Commission proposes to revise its regulations to: Incorporate two tiers of project safety inspections by independent consultants, codify existing guidance requiring certain licensees to develop an owner's dam safety program and a public safety plan, update existing regulations related to public safety incident reporting, and make various minor revisions.

DATES: Comments are due September 22, 2020.

ADDRESSES: You may send comments, identified by RM20–9–000, by either of the following methods:

- *Agency Website:* Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail:* Those unable to file electronically may mail comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document.

FOR FURTHER INFORMATION CONTACT: Ken Fearon (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6015, *kenneth.fearon@ferc.gov*
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Tara DiJohn (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8671, *tara.dijohn@ferc.gov*

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1. The Federal Energy Regulatory Commission (Commission or FERC), under Part I of the Federal Power Act (FPA), licenses hydropower projects that are developed by non-Federal entities including individuals, private entities, states, municipalities, electric cooperatives, and others. Under section 10(c) of the FPA, the licensee of any hydropower project under the jurisdiction of the Commission must conform to ''such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property.'' [1]

2. Since early 2017, the Commission has solicited, received, and reviewed expert opinions on the structure and implementation of the Commission's dam safety program, particularly the provisions for independent consultants' safety inspections required under part 12, subpart D of the Commission's regulations.[2] These independent consultant safety inspections, commonly referred to as part 12 inspections, are facilitated by licensees and are in addition to the dam safety inspections conducted by Commission staff.

3. To address expert recommendations on the part 12 inspection process, and to codify guidance issued by the Commission's Office of Energy Projects, Division of Dam Safety and Inspections (D2SI) over the past several years, the Commission proposes to revise its rules in Title 18, part 12 of the Code of Federal Regulations. Under this proposal to revise the Commission's part 12 regulations, the entirety of subpart D will be replaced, a new subpart F will be added, and minor revisions will be made to subparts A, B, C, and E.

I. Background

4. Section 10(c) of the FPA requires licensees, in pertinent part, to ''maintain the project works in a condition of repair adequate . . . for the efficient operation of said works in the development and transmission of power,'' to ''make all necessary renewals and replacements,'' and to ''conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property.'' [3]

5. Pursuant to FPA section 10(c), on December 27, 1965, the Commission's predecessor agency, the Federal Power Commission (FPC), in Order No. 315, promulgated regulations that require licensees to provide complete safety inspections of licensed water power project works by independent consultants at five-year intervals, or more frequently if necessary.[4] Order No. 315 was intended to supplement D2SI staff's inspections of project works with detailed periodic inspections overseen by an independent consultant.[5]

6. On January 21, 1981, the Commission issued Order No. 122 to consolidate the Commission's orders, regulations, and practices relating to project safety under part 12 of the Commission's rules and to revise the existing project safety inspection regulations.[6] The Commission's rules related to independent consultant safety inspections have not been substantially revised or amended since 1981.

7. To ensure that the Commission's dam safety program remains current with the evolving nature of the dam safety field, D2SI staff issues, and periodically updates, *Engineering Guidelines for the Evaluation of Hydropower Projects* (Engineering Guidelines).[7] D2SI staff has also

[1] 16 U.S.C. 803(c).

[2] 18 CFR part 12.

[3] 18 U.S.C. 803(c).

[4] *Hydroelectric Licensed Projects–Inspections to Insure Safe Operation,* Order No. 315, 34 FPC 1551 (1965).

[5] *Id.*

[6] *Water Power Projects and Project Works Safety,* Order No. 122, FERC Stats. & Regs. ¶ 30,225 (1981) (cross-referenced at 14 FERC ¶ 61,041).

[7] D2SI's Engineering Guidelines are available on the Commission's website at *https://www.ferc.gov/industries-data/hydropower/dam-safety-and-*

augmented the part 12 inspection process over the years by adding additional inspection components (*e.g.,* the Potential Failure Mode Analysis, the Supporting Technical Information Document, and the Dam Safety Surveillance and Monitoring Program and Report).

8. In June 2002, D2SI began a licensee pilot program for conducting a Potential Failure Mode Analysis [8] as a component of a part 12 inspection and issued for comment a draft Chapter 14 of the Engineering Guidelines, which would guide licensees in performing this type of dam safety analysis. In April 2003, D2SI issued a final Chapter 14 of the Engineering Guidelines and required a Potential Failure Mode Analysis to be performed during all part 12 inspections. Consistent with this requirement, licensees have conducted over a thousand Potential Failure Mode Analyses. The Commission proposes to codify the Potential Failure Mode Analysis as part of the scope of a part 12 inspection, specifically during a comprehensive assessment and typically at a ten-year interval.

9. On December 14, 2005, the upper reservoir of the Taum Sauk Hydroelectric Project No. 2277, a pumped storage project, was overtopped during the final pumping cycle, causing a breach of the upper reservoir which released over 1 billion gallons of water, resulting in personal injury and significant environmental and property damage.[9] Following the December 2005 failure of Taum Sauk Dam, D2SI began requiring licensees to develop and maintain an Owner's Dam Safety Program, with the goal of ensuring that licensees have a robust and focused dam safety program to protect public safety, the environment, and project facilities. In August 2012, D2SI staff required all owners of high and significant hazard potential dams [10] to submit an Owner's Dam Safety Program.[11] The Commission proposes to codify this requirement by adding a new subpart F to the Commission's part 12 regulations.

10. On February 7, 2017, high flows in the Feather River basin caused the water level in the Feather River Hydroelectric Project No. 2100 reservoir to rise at Oroville Dam and, for the first time in project history, flow down the emergency spillway, resulting in extensive erosion and damage to Oroville Dam's main spillway and emergency spillway area.[12] This event precipitated the evacuation of nearly 188,000 residents from the town of Oroville and from other downstream communities north of Sacramento, California. Following the February 2017 Oroville Dam spillway incident, the Commission required the project licensee, California Department of Water Resources (CA DWR), to convene a team of independent, third-party consultants to complete a forensic analysis to determine the cause of the incident.[13] The Oroville Independent Forensic Team Report documented the team's findings, conclusions, and recommendations.[14] Several of the Oroville Independent Forensic Team's observations related to potential areas for improvement in the Commission's dam safety program, particularly the part 12 inspection process.

11. Separately, the Commission convened a FERC After Action Panel to review and evaluate the Commission's dam safety program in the months following the Oroville Dam spillway incident. The D2SI Director's mandate to the FERC After Action Panel was to: ''Review project documents and history for Oroville Dam . . . . ;'' ''review the performance of the FERC dam safety program at the Oroville Dam Project, which includes both work and actions by FERC staff, and the program requirements on the dam owner, such as the [p]art 12 process, the [Potential Failure Mode Analyses] process, the Instrumentation and Monitoring Program, and Owners Dam Safety Program . . . . ;'' ''make conclusions regarding any shortcomings in the FERC dam safety program implementation at Oroville Dam;'' and if shortcomings are identified, recommend ''improvement or changes to the FERC dam safety program to ensure that future incidents like Oroville can be avoided.'' [15]

12. The FERC After Action Panel Report documented several shortcomings of the Commission's dam safety program with respect to its implementation at the Oroville Dam Project, and provided several recommendations for improvements to the part 12 inspection process that could increase the likelihood that design and operational deficiencies are detected in advance of a major incident.

13. In light of the Oroville Independent Forensic Team Report and the FERC After Action Panel Report findings, the desire to codify existing dam safety guidance, and the Commission's authority under FPA section 10(c) to promulgate rules protecting life, health, and property, the Commission proposes to revise its part 12 regulations as discussed further below.[16]

II. Discussion

14. In evaluating potential revisions to its part 12 regulations, the Commission considered the findings of the Oroville Independent Forensic Team and FERC After Action Panel; reviewed the inspection practices of other Federal agencies responsible for ensuring the safety of a large number of dams, including those of the Bureau of Reclamation (Reclamation) [17] and the US Army Corps of Engineers (Army

inspections/engineering-guidelines-evaluation-hydropower.

[8] A Potential Failure Mode Analysis is a method to evaluate the various ways a dam and its components could possibly fail. Generally, this involves identifying possible failure scenarios and evaluating those factors that could make the failure mode scenario more or less likely to occur. Finally, the significance of each potential failure mode is determined and a prioritized plan to address the most significant potential failure modes is developed.

[9] More information about the Taum Sauk Dam Breach Incident can be found on the Commission's website at *https://www.ferc.gov/industries-data/hydropower/dam-safety-and-inspections/taum-sauk-pumped-storage-project-p-2277-dam.*

[10] Hazard potential is a classification based on the potential consequences in the event of failure or misoperation of the dam, canal, or water conveyance, and is subdivided into categories (*e.g.,* Low, Significant, High). High hazard potential generally indicates that failure or misoperation of the project feature will probably cause loss of human life. Significant hazard potential and low hazard potential generally indicate that failure or misoperation will probably not cause loss of human life but may have some amount of economic, environmental, or other consequences. Hazard classifications are based solely on the consequences of dam failure and do not in any way reflect the condition of the rated dams.

[11] *See* Commission staff's August 15, 2012 letter to owners of high and significant hazard potential dams, *https://www.ferc.gov/sites/default/files/2020-04/letter-submit-odsp.pdf.*

[12] More information about the Oroville Dam Spillway Incident can be found on the Commission's website at *https://www.ferc.gov/industries-data/hydropower/dam-safety-and-inspections/oroville-dam-service-spillway-p-2100.*

[13] *See* Commission staff's letter to CA DWR regarding the emergency repair and board of consultants for Oroville Dam spillway, Project No. 2100 (Feb. 13, 2017), *https://www.ferc.gov/sites/default/files/2020-04/Orovilledam.pdf.*

[14] Independent Forensic Team Report, Oroville Dam Spillway Incident (Jan. 5, 2018), *https://damsafety.org/sites/default/files/files/Independent%20Forensic%20Team%20Report%20Final%2001-05-18.pdf.*

[15] *See* FERC After Action Panel Assessment of Oroville Spillway Incident Causes and Recommendations to Improve Effectiveness of the FERC Dam Safety Program (Nov. 23, 2018), *https://www.ferc.gov/sites/default/files/2020-04/report damsafety.pdf.*

[16] Recently, the failures of the Edenville and Sanford Dams in Michigan have resulted in substantial hardship and economic damage. A forensic investigation is being undertaken to understand the root causes of those failures. This proposed rule was substantially complete prior to the Michigan dam failures and is not intended to address any findings or recommendations that may result from the forensic investigation. The Commission will review the findings once the investigation is complete.

[17] Reclamation, *Review/Examination Program for High and Significant Hazard Dams* (Sept. 2018), *https://www.usbr.gov/recman/fac/fac01-07.pdf.*

Corps);[18] and reviewed the Federal Emergency Management Agency's (FEMA) *Federal Guidelines for Dam Safety*.[19]

15. First, the Commission proposes to implement two tiers of part 12 inspections, in addition to staff's regular inspections. The two-tier structure would include two types of inspections: A comprehensive assessment and a periodic inspection. Each type of inspection would be performed at a ten-year interval, with the periodic inspection occurring midway between comprehensive assessments. The proposed structure would maintain the current five-year interval between part 12 inspections (alternating between a comprehensive assessment and a periodic inspection) and would mirror FEMA's recommendation that formal inspections be conducted at an interval not to exceed five years.[20] The proposed alternating two-tier structure is similar to those used by Reclamation and Army Corps. Because the existing five-year interval between part 12 inspections remains the same, the proposed regulations will not increase the likelihood that undiscovered safety issues will persist for longer periods of time between inspections. The comprehensive assessment would require a more in-depth review than the current part 12 inspection, would formally incorporate the existing potential failure modes analysis (PFMA) process, and would require a semi-quantitative risk analysis, as recommended by the Oroville Independent Forensic Team and FERC After Action Panel. The periodic inspection would have a narrower scope than the current part 12 inspection and focus primarily on the performance of project works between comprehensive assessments.

16. Second, the Commission proposes to change the process by which D2SI reviews and evaluates the qualifications of independent consultants that conduct part 12 inspections. Currently, § 12.34 of the Commission's regulations require the licensee to submit to the Director of D2SI for approval a resume describing the independent consultant's experience.[21] FEMA recommends that ''the inspection team should be chosen on a site-specific basis considering the nature and type of dam . . . [and] should comprise individuals having appropriate specialized knowledge in structural, mechanical, electrical, hydraulic, and embankment design; geology; concrete materials; and construction procedures.''[22]

17. The proposed process would require the licensee to submit to the Director of D2SI an independent consultant team proposal, comprising one or more independent consultants and additional engineering or scientific personnel, as needed, which must demonstrate that the members of that team possess an appropriate level of expertise for the specific project under consideration. This proposed change reflects the reality that, for many of the hydropower projects under the Commission's jurisdiction, a single independent consultant will not possess the appropriate degree and diversity of technical proficiency necessary to evaluate all aspects of the project. The current requirement that an independent consultant be a licensed professional engineer with a minimum of ten years' experience in ''dam design and construction and in the investigation of the safety of existing dams'' would remain.[23] However, as proposed, this requirement would apply only to the designated independent consultants, and not to other supporting members of the independent consultant team.

18. Third, the Commission proposes to codify existing guidance related to the Owner's Dam Safety Program. Currently, the Commission's part 12 regulations do not explicitly require a licensee to develop an Owner's Dam Safety Program. However, pursuant to 18 CFR 12.4(b)(2)(ii)(B), the Commission has the authority to require licensees to submit reports or information on any condition affecting the safety of the project. Since the initial request for an Owner's Dam Safety Program in August 2012,[24] approximately 250 have been developed by licensees and submitted to the Commission. This Notice of Proposed Rulemaking (NOPR) proposes to codify the requirement that licensees of one or more high or significant hazard potential dams[25] must prepare, maintain, file with the Commission, and periodically review and update an Owner's Dam Safety Program. Licensees would be required to designate a person responsible for overseeing day-to-day implementation of the dam safety program.

19. The Commission also proposes to update its regulations related to public safety at or near hydropower projects. Currently, licensees are required to install and maintain public safety devices and to report deaths or serious injuries at their projects.[26] The NOPR proposes to revise the definition of a ''project-related'' incident to clarify that licensees are required to report those public safety incidents that are related to the operation of hydropower projects; to report rescues in addition to deaths and serious injuries; and to prepare, maintain, and submit a public safety plan to D2SI, which is the current practice required by existing D2SI guidance.

20. Finally, the Commission plans to update the Engineering Guidelines by adding new Chapters 15 through 18. Concurrently with the issuance of this NOPR, the Commission will solicit public review and comment on these guidelines, which will be issued in draft format in four separate advisory dockets accessible on the Commission's eLibrary website. Chapter 15, available for review and comment in Docket No. AD20–20–000, will provide licensee guidance for developing and maintaining a Supporting Technical Information Document.[27] Chapter 16, available for review and comment in Docket No. AD20–21–000, will provide licensee guidance on the scope of the part 12D independent consultant inspection program. Chapter 17, available for review and comment in Docket No. AD20–22–000, will provide licensee guidance for conducting a Potential Failure Mode Analysis. Chapter 18, available for review and comment in Docket No. AD20–23–000, will provide licensee guidance for conducting a Level 2 Risk Analysis. Comments on draft Chapters 15 through 18 of the Engineering Guidelines should be filed in the corresponding docket numbers listed above.

A. Review, Inspection, and Assessment by Independent Consultants

21. In response to the findings and recommendations in the Oroville Independent Forensic Team Report and FERC After Action Panel Report, the Commission is proposing to revise its regulations under 18 CFR part 12,

[18] Army Corps, *Safety of Dams—Policy and Procedures* (Mar. 2014), *https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_1110-2-1156.pdf*.

[19] FEMA, *Federal Guidelines for Dam Safety* (Apr. 2004), *https://www.fema.gov/media-library-data/20130726-1502-20490-5785/fema-93.pdf* (FEMA Dam Safety Guidelines).

[20] *Id.* at 42.

[21] 18 CFR 12.34.

[22] FEMA Dam Safety Guidelines at 42.

[23] 18 CFR 12.31(a).

[24] *See supra* P 9.

[25] *See supra* note 10 (defining high hazard and significant hazard potentials).

[26] *See* 18 CFR 12.10(b) (death or serious injury reporting) and 12.42 (warning and safety devices).

[27] As explained in draft Chapter 15, the Supporting Technical Information Document is a ''living'' document that serves as a compendium of existing project information, including information about a project's design, construction history, operating procedures, and engineering analyses.

subpart D, to enhance the program for inspections by independent consultants. The proposed regulations, if enacted, would replace the existing subpart D in its entirety. Due to the proposed implementation of two tiers of part 12 inspections (periodic inspections and comprehensive assessments), subpart D would include §§ 12.30 through 12.41, which results in changes to the numbering of subpart E (existing § 12.40 becomes § 12.50).

1. Section 12.30—Applicability

22. Section 12.30 establishes the applicability of subpart D's independent consultant inspection requirement and identifies three conditions that result in a project being subject to its provisions. As § 12.30 is currently written, subpart D applies to any project development that has a dam (1) greater than a specified height; (2) with an impoundment exceeding a specific gross storage capacity; or (3) that has a high hazard potential and is determined by the Regional Engineer to require inspection by an independent consultant. Although the subpart D regulations could be interpreted as only applying to dams, this subpart has in practice also been applied to those portions of canals and penstocks judged to have a high hazard potential.

23. The proposed revisions to § 12.30 are intended to clarify that the provisions of subpart D may apply to projects that do not have a dam. The proposed revisions maintain the existing height and storage thresholds but clarify that they are applicable only to dams. The revisions also clarify that the high hazard potential consideration is applicable to all project features; the project development would be subject to subpart D if any portion of a project feature has a high hazard potential. Additionally, subpart D would apply to a project development if the Regional Engineer or other Commission representative determines that an inspection is required for reasons not listed. The proposed revisions to § 12.30 are consistent with existing D2SI practice.

2. Section 12.31—Definitions

24. Section 12.31 defines independent consultant, high hazard potential, height above streambed, and gross storage capacity for the purposes of the provisions of subpart D. Section 12.31 also provides the D2SI Director the authority to grant a waiver from the ten-year experience requirement in the definition of independent consultant.

25. The proposed revisions to § 12.31 update the existing definitions of an independent consultant and hazard potential, and provide new definitions for independent consultant team, periodic inspection, and comprehensive assessment.

26. The existing definition of an independent consultant is a licensed professional engineer, with at least ten years of experience and expertise related to dams, and is not, and has not been within two years, an employee of the licensee or its affiliates or an agent acting on behalf of the licensee. The proposed definition maintains the licensure and experience requirements. But, rather than one requirement regarding the professional relationship between the independent consultant and licensee, the proposed definition divides the requirement into three separate requirements. First, the independent consultation is not an employee of the licensee or its affiliates. Second, the independent consultant has not been an employee of the licensee or its affiliates within two years prior to performing the inspection under this subpart. The third restriction is that the independent consultant has not been an agent acting on behalf of the licensee or its affiliates before performing services under this part, for a manner and time period defined in the Engineering Guidelines. The guidelines provide examples of the type of information Commission staff will consider when making this determination. The circumstances of each case will differ and require evaluation by Commission staff; therefore, specific thresholds for scope or duration of services are not established in the proposed definition. The Commission intends to apply this restriction narrowly, with the primary goal of ensuring that independent consultants are not responsible for reviewing work products to which they contributed substantially.

27. The Commission proposes to adopt a definition of an independent consultant team as comprising one or more independent consultants and additional engineering and scientific personnel, as needed.

28. The Commission proposes to require that collectively the independent consultant team has expertise commensurate with the scale, complexity, and relevant technical disciplines of the project and type of review being performed (periodic inspection or comprehensive assessment). This approach will ensure that each review is conducted by qualified personnel such that the Commission can reasonably expect that potential issues relating to project safety or stability can be identified. The Commission intends to place higher expectations on the qualifications of the personnel on an independent consultant team, and their collective experience and expertise, for comprehensive assessments compared to periodic inspections; projects with higher consequences or total project risk; projects with a greater number of, or more technically diverse or challenging, project features; and projects with a history of unusual or adverse performance. As further discussed below, the proposed regulations in § 12.34 also require that the licensee obtain approval of the independent consultant team from the Director of D2SI. Currently, § 12.34 only requires that resumes be submitted for any independent consultants.

29. The existing definition of hazard potential, which refers to an outdated source, is updated to ensure that it is consistent with FEMA's Hazard Potential Classification System for Dams.[28] The proposed definition also ensures that it is applicable to dams, canals, and other water conveyances, or any portion thereof, and refers to the Engineering Guidelines for specific criteria that result in a classification of low, significant, or high hazard potential.

30. Definitions for periodic inspection and comprehensive assessment are proposed for inclusion in § 12.31. The definitions of ''height above streambed'' and ''gross storage capacity'' would remain unchanged.

3. Section 12.32—General Inspection Requirement

31. Existing § 12.32 establishes the requirement for periodic inspection, by an independent consultant, of the project works of each development[29] subject to the provisions of subpart D.

32. The proposed revisions to § 12.32 incorporate the terms ''periodic inspection'' and ''comprehensive assessment'' and require that a report be filed following each type of inspection. There are no substantive changes to the general requirement that an independent consultant's inspection be performed. The general requirement to file a report following an inspection would be relocated from existing § 12.37 to proposed § 12.32.

[28] *See* FEMA, *Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams* (Apr. 2004), *https://www.fema.gov/media-library-data/20130726-1516-20490-7951/fema-333.pdf* (FEMA Hazard Potential Classification System).

[29] Development means that part of a project comprising an impoundment and its associated dams, forebays, water conveyance facilities, power plants, and other appurtenant facilities. A project may comprise one or more developments. 18 CFR 12.3(b)(7).

4. Section 12.33—Exemption

33. Existing § 12.33 grants the Director of D2SI the authority to exempt projects from the provisions of subpart D for good cause and provides an example of what may constitute good cause. At the Director of D2SI's discretion, the exemption may be granted in perpetuity or may require periodic reevaluation of the exemption justification (*e.g.,* by reviewing and confirming that the project has a low hazard potential). The Director of D2SI's authority to exempt projects from subpart D is retained in proposed § 12.33(a).

34. The proposed revisions to § 12.33(b) update the example of good cause to include canals and other water conveyances and refer to the Engineering Guidelines for what constitutes a low hazard potential.

35. Proposed § 12.33(c) rescinds any exemption from subpart D that was issued prior to the effective date of this proposed rule. Existing subpart D exemptions have been granted over several decades and, as the state of the practice of dam safety has evolved, have not been reconsidered consistently. Accordingly, an entity desiring an exemption will be required to reapply for one to ensure that any justification for a subpart D exemption is reviewed based on the current state of the practice, considering potential failure modes, consequences, and total project risk.

5. Section 12.34—Approval of Independent Consultant Team

36. Prior to performing an inspection, existing § 12.34 requires a licensee to submit to the Director of the Office of Energy Projects, for approval, a detailed resume for an independent consultant. The Commission proposes several revisions to § 12.34 to address concerns raised in the Oroville Independent Forensic Team report, the FERC After Action Panel report, and issues related to implementation of the existing rule over the past several years.[30]

37. Proposed § 12.34(a) requires that the licensee obtain written approval of the independent consultant team, from the Director of D2SI instead of the Director of the Office of Energy Projects, prior to performing a periodic inspection or comprehensive assessment. While in practice D2SI has granted approval of independent consultants prior to inspections, the regulation as currently written does not stipulate that D2SI approval must be obtained.

38. Proposed § 12.34(b), which requires that the licensee submit a detailed independent consultant team proposal to the Director of D2SI at least 180 days prior to performing a periodic inspection or comprehensive assessment, includes two major changes. First, the existing regulations require the detailed resume to be submitted 60 days in advance. The proposed increase in the time period from 60 days to 180 days does not represent a change in practice. D2SI staff routinely issue reminder letters to licensees approximately 18 months in advance of any inspection required under subpart D, and for several years have requested that independent consultants' resumes be submitted six months in advance to ensure that all parties are aware of their roles and responsibilities, and have sufficient time to prepare for the inspection. The proposed regulation codifies D2SI's current practice.

39. Second, existing § 12.34 requires that resumes be submitted only for any independent consultant, to demonstrate that they meet the requirements provided in § 12.31. Proposed § 12.34(b) requires that the licensee submit documentation of the experience and qualifications for all members of the independent consultant team, including one or more independent consultants and additional contributing members, as needed. The regulation includes separate paragraphs that apply depending on whether the independent consultant team comprises one or multiple persons. This change will allow Commission staff to evaluate the breadth and depth of the team's experience and ensure that it is commensurate with the scale, complexity, and technical disciplines of the project and type of review being performed. The Commission intends for a comprehensive assessment to require a higher level of experience and expertise than a periodic inspection, due to the broader scope of the comprehensive assessment.

40. Proposed § 12.34(c) grants the Director of D2SI the authority to disapprove of an independent consultant team member, regardless of demonstrated experience and qualifications, for good cause, such as having a report rejected by the Commission within the preceding five years. This provision will allow the Commission to ensure that independent consultants' inspections are performed by qualified parties.

6. Section 12.35—Periodic Inspection

41. Existing § 12.35 establishes the scope of the independent consultant's inspection. The Commission proposes to replace § 12.35 in its entirety such that it establishes the scope of a periodic inspection, the less intensive of the two proposed tiers of part 12 inspections.

42. Proposed § 12.35 establishes the scope of a periodic inspection, which includes review of prior reports, a physical field inspection, review of the surveillance and monitoring plan and data, and review of dam and public safety programs. A periodic inspection has a reduced scope compared to the existing independent consultant's inspection.

7. Section 12.36—Report on Periodic Inspection

43. Existing § 12.36 is related to emergency corrective measures. We propose to combine existing §§ 12.36 and 12.39 under a single ''corrective measures'' heading in § 12.41, as discussed subsequently in this NOPR.

44. Proposed § 12.36 establishes the requirements for the periodic inspection report and is intended to serve a purpose similar to existing § 12.37 (report of the independent consultant) with several notable changes. Existing § 12.37(b) includes provisions specific to initial reports filed under subpart D, which currently requires the initial report to include general project information (project descriptions, maps, design summary information, geologic information, etc.) and allows licensees to incorporate by reference existing information and analyses contained in previously-prepared independent consultant reports (existing § 12.37(b)(2)). The Commission proposes to eliminate the differentiation between initial and subsequent reports and to require every periodic inspection report to meet the same standard, without relying on the practice of incorporating by reference information or analyses contained in earlier reports.

45. Proposed § 12.36(b) provides a list of items that require specific evaluation in the periodic inspection report. These items pertain to the surveillance, monitoring, and performance of the project, with a focus on whether any potential failure modes, whether previously identified or not, are active, developing, or warrant further evaluation at the time of the periodic inspection.

46. The Commission proposes to eliminate the provisions that allow

[30] In particular, the improvements intended by the proposed changes to the independent consultant team approval process include: Broadening the composition of independent consultant team members to include representation from varied technical disciplines; ensuring thorough review of project features by qualified individuals with the appropriate technical disciplines; and performing comprehensive reviews of the original project design, construction, and subsequent performance.

independent consultants to incorporate the previous independent consultant's report by reference and document only that information that has changed since the previous report. Proposed § 12.36(c) provides a list of items which require a status update and evaluation of any changes since the previous inspection.

47. Existing provisions in §§ 12.37(c)(4) through (8) are retained as proposed §§ 12.36(d) through (h) with minor changes to ensure consistency with other proposed revisions. Section 12.36(i) is added to refer to the Engineering Guidelines, which contain additional guidance regarding the format and contents of the information discussed above.

8. Section 12.37—Comprehensive Assessment

48. Existing § 12.37 establishes requirements for the report of the independent consultant. As discussed elsewhere in this NOPR, the proposed revisions to §§ 12.36 and 12.38 incorporate this information for reports on periodic inspections and comprehensive assessments, respectively.

49. Proposed § 12.37 establishes the scope of a comprehensive assessment, the more intensive of the two proposed tiers of part 12 inspection. As many components of the comprehensive assessment are identical to or build upon the periodic inspection, several paragraphs of the proposed regulations reference their corresponding paragraphs in § 12.35. Below, we discuss the aspects of a comprehensive assessment that are not required for a periodic inspection.

50. In addition to those elements required for a periodic inspection set forth in proposed § 12.35, a comprehensive assessment includes review of prior reports and analyses of record, review of the supporting technical information document, performance of a potential failure modes analysis, and performance of a risk analysis. A comprehensive assessment has an expanded scope compared to the existing independent consultant's inspection. Proposed § 12.37(a)(2) requires the independent consultant team to perform a more detailed review of existing documentation, including as-built drawings, monitoring data, and analyses of record, than required by the current independent consultant's inspection.

51. Proposed § 12.37(f) requires a comprehensive assessment to include a potential failure mode analysis, which is already standard practice for current part 12 inspections. D2SI has developed draft Chapter 17 of the Engineering Guidelines, which describes how to conduct a potential failure mode analysis. As discussed above, the Commission is soliciting public comments on draft Chapter 17 in Docket No. AD20–22–00.[31]

52. Proposed § 12.37(g) incorporates a semi-quantitative risk analysis as part of the scope of a comprehensive assessment. Other Federal agencies, including Reclamation, Army Corps, and the Tennessee Valley Authority, have incorporated semi-quantitative risk analyses into their systematic comprehensive dam safety reviews. FEMA also provides recommendations and guidance for the performance of semi-quantitative risk analysis in their guidelines.[32] D2SI has developed draft Chapter 18 of the Engineering Guidelines, which describes the process of, and procedures for performing, a semi-quantitative risk analysis. As discussed above, the Commission is soliciting public comments on draft Chapter 18 in Docket No. AD20–23–00.[33]

53. Proposed § 12.37(g) grants the D2SI Regional Engineer the authority to waive the requirement to complete a risk analysis during a comprehensive assessment. This allows the Commission to focus efforts on those projects that present greater risk to life, health, and property, and provides flexibility for D2SI staff to gradually phase in the risk analysis component of a comprehensive assessment, allowing sufficient time for D2SI staff to develop and deliver training on the proposed risk analysis procedures to D2SI staff, licensee staff, and consultants.

9. Section 12.38—Report on Comprehensive Assessment

54. Existing § 12.38 is related to the timeline for submitting reports on an independent consultant's inspection. This information would be relocated to proposed § 12.40, discussed subsequently in this NOPR.

55. Proposed § 12.38 establishes the requirements for the report on a comprehensive assessment. As with the corresponding section regarding a report on a periodic inspection, the Commission proposes to eliminate the difference between initial and subsequent reports and to require every comprehensive assessment report to meet the same standard.

56. Proposed § 12.38(b) references § 12.36(b) and provides a list of items that require specific evaluation in the comprehensive assessment report. In addition to those elements required for a periodic inspection, a comprehensive assessment report must include an evaluation of spillway adequacy; the potential for internal erosion and/or piping of embankments, foundations, and abutments; structural integrity and stability of all structures under credible loading conditions; any other analyses of record pertaining to geology, seismicity, hydrology, hydraulics, or project safety; and the supporting technical information document, potential failure modes analysis, and risk analysis. An evaluation of an analysis of record must include an evaluation of the accuracy, relevance, and consistency with the current state of the practice of dam engineering, and the comprehensive assessment report must include clear documentation of the independent consultant team's rationale. If the independent consultant team is unable to review any analysis of record or disagrees with the analysis of record in any way, the independent consultant must recommend new analyses.

57. The Commission also proposes to eliminate the provisions that allow independent consultants to incorporate the previous independent consultant's report by reference and document only that information that has changed since the previous report. By referencing the periodic inspection report requirements (§ 12.36(c)) (*i.e.,* report on periodic inspection), proposed § 12.38(c) requires the independent consultant to provide, across seven categories, a status update and evaluation of any changes since the previous inspection, which are the same required for a periodic inspection.

58. The existing provisions in §§ 12.37(c)(4) through (8) are retained as proposed §§ 12.38(d) through (h) with minor changes to ensure consistency with other proposed revisions. Proposed § 12.38(j) is added to refer to the Engineering Guidelines, which contain additional details regarding the format and contents of the information discussed above.

10. Section 12.39—Evaluation of Spillway Adequacy

59. Existing § 12.39 relates to taking corrective measures after the report; this information is relocated to § 12.41, discussed subsequently in this NOPR. Currently, the requirement to evaluate spillway adequacy is a required component of the part 12 inspection and is found in § 12.35(b) of our regulations. However, providing this information in

[31] *See supra* P 20.

[32] FEMA, *Federal Guidelines for Dam Safety Risk Management* (Jan. 2015), *http://www.fema.gov/media-library-data/1423661058965-58dfcecc8d8d18b7e9b2a79ce1e83c96/FEMAP-1025.pdf.*

[33] *See supra* P 20.

a standalone section will highlight the importance of evaluating spillway adequacy. Accordingly, we propose to relocate this requirement to proposed § 12.39.

60. Proposed § 12.39 expands the existing requirements for evaluating spillway adequacy. These additional requirements are intended to address scenarios similar to the 2017 Oroville Dam spillway incident, and would require the independent consultant to evaluate the potential for misoperation of, failure to operate, blockage of, or debilitating damage to a spillway, and the resulting effects on the maximum reservoir level and the potential for overtopping.

11. Section 12.40—Time for Inspections and Reports

61. The timelines for performing independent consultant inspections and submitting inspection reports, currently found in existing § 12.38, would be relocated to proposed § 12.40. The existing rules establishes a five-year cycle between inspections and includes provisions for initial inspections of existing licensed projects, projects licensed but not yet constructed, and all other projects; includes a separate set of provisions related to projects inspected by an independent consultant prior to March 1, 1981; and authorizes the D2SI Regional Engineer to grant extensions of time to file an independent consultant's inspection report.

62. Proposed § 12.40 revises the timeline for submitting reports on inspections by independent consultants. While the current five-year interval between inspections and reports is maintained, the inspections will alternate between periodic inspections and comprehensive assessments; thus, there is a ten-year interval between any pair of consecutive comprehensive assessments or periodic inspections.

63. Proposed § 12.40(a) consolidates the timing of inspections and reports for projects previously inspected by an independent consultant. Section 12.40(a)(1) maintains the five-year cycle for an independent consultant's inspection of each project development. Section 12.40(a)(2) grants the D2SI Regional Engineer the authority to require that the initial report due to be filed after January 1, 2021, be either a comprehensive assessment or periodic inspection, enabling D2SI to balance the number of comprehensive assessments due each year over the ten-year cycle. Section 12.40(a)(3) requires that the first comprehensive assessment be completed, and the report on it filed, by December 31, 2034.

64. Proposed § 12.40(b) retains and updates the terminology related to existing provisions for existing licensed projects previously inspected, projects licensed but not yet constructed, and other projects.

65. Proposed § 12.40(c) establishes the ten-year interval between comprehensive assessments and requires that a periodic inspection be performed within five years following a comprehensive assessment.

66. Proposed §§ 12.40(d) and 12.40(e) authorize the D2SI Regional Engineer to extend the time to file an independent consultant's report, for good cause shown, and may require that any inspection scheduled to be performed be a periodic inspection or comprehensive assessment. For example, where a project is scheduled for a periodic inspection but a dam safety incident, extreme loading condition (*e.g.,* unprecedented flood, large earthquake, etc.), or other significant change in condition has occurred since the previous comprehensive assessment, the D2SI Regional Engineer may require that the project undergo a comprehensive assessment rather than a periodic inspection. Alternatively, for projects that have no life safety consequences and a low total project risk, the D2SI Regional Engineer may allow comprehensive assessments to be performed at an interval greater than every ten years.

12. Section 12.41—Corrective Measures

67. The procedures for addressing items identified during a part 12 inspection that require corrective measures are currently set forth in existing § 12.39. In this proposed rule, these procedures would be relocated to proposed § 12.41. The existing regulations require licensees to: Submit to the D2SI Regional Engineer a plan and schedule within 60 days of filing an independent consultant's report with the Commission, and complete all corrective measures in accordance with the plan and schedule approved or modified by the D2SI Regional Engineer. Under the existing regulations, the D2SI Regional Engineer may extend the time for filing the plan and schedule. This NOPR does not propose to modify or eliminate these requirements.

68. Proposed § 12.41 incorporates the requirements of existing § 12.36 (emergency corrective measures) and § 12.39 (post-inspection corrective measures) into a single section titled ''corrective measures.'' The proposed revisions in § 12.41(a)(1)(i) clarify that the licensee's plan and schedule must address the recommendations of the independent consultant and include investigation as an option for the licensee to implement. Proposed § 12.41(b)(2) would be added to ensure that emergency corrective measures are documented in the corrective plan and schedule required by § 12.41(a)(1).

B. Owner's Dam Safety Program

69. The Commission began developing the Owner's Dam Safety Program guidance following the December 2005 failure of Taum Sauk Dam. The lack of a strong dam safety culture in the licensee's organization was a major contributing factor to that incident, as well as to several dam safety incidents that preceded and followed it. In August 2012, the Director of D2SI issued letters to all owners of high or significant hazard potential dams requiring them to submit an Owner's Dam Safety Program.[34] Additional information and guidance on the development of an Owner's Dam Safety Program development has been available on the Commission's website since this time. Proposed subpart F consolidates and codifies that guidance, as discussed further below.

1. Section 12.60—Applicability

70. Proposed § 12.60 specifies that an Owner's Dam Safety Program must be submitted by any licensee that has a dam or other project feature with a high or significant hazard potential. This does not represent a change from existing practice.

2. Section 12.61—Definitions

71. Proposed § 12.61 defines the terms ''Chief Dam Safety Engineer'' and ''Chief Dam Safety Coordinator,'' as used in subpart F. The Chief Dam Safety Engineer or Chief Dam Safety Coordinator is defined as the person who oversees the implementation of the Owner's Dam Safety Program and has primary responsibility for ensuring the safety of the licensee's dams and other project features. The only difference between the definitions is that a Chief Dam Safety Engineer must be a licensed professional engineer.

3. Section 12.62—General Requirements

72. Proposed § 12.62 establishes three general requirements for an Owner's Dam Safety Program. Section 12.62(a) requires an Owner's Dam Safety Program to designate either a Chief Dam Safety Engineer or a Chief Dam Safety Coordinator. Any Owner's Dam Safety

[34] Letter to All Licensees and Exemptees of High and Significant Hazard Potential Dams Requiring Submittal of an Owner's Dam Safety Program, August 2012, *https://www.ferc.gov/sites/default/files/2020-04/letter-submit-odsp.pdf.*

Program that applies to one or more dams or other project features with a high hazard potential must designate a Chief Dam Safety Engineer. Section 12.62(b) requires the Owner's Dam Safety Program to be signed by the owner and the Chief Dam Safety Engineer or Chief Dam Safety Coordinator, as applicable. Section 12.62(c) requires the Owner's Dam Safety Program to be reviewed and updated on a periodic basis. Section 12.62(d) permits the Owner to designate outside parties, such as consultants, to serve as Chief Dam Safety Engineer or Chief Dam Safety Coordinator, though the owner retains ultimate responsibility for the safety and day-to-day implementation of their projects.

4. Section 12.63—Contents of Owner's Dam Safety Program

73. Proposed § 12.63 establishes the minimum contents of an Owner's Dam Safety Program. Sections 12.63(a)–(f) each correspond to a topic area that should be addressed in an Owner's Dam Safety Program document and reflected in the document's table of contents, as provided in current D2SI guidance available on the Commission's website.[35] Under § 12.63(g), the Owner's Dam Safety Program should also include any additional information that may be prescribed by the Engineering Guidelines, a draft chapter of which is in development and will be provided at a later date for public review and comment.

5. Section 12.64—Annual Review and Update

74. Proposed § 12.64 describes the requirements for reviewing and updating an Owner's Dam Safety Program. Section 12.64 specifies that any Owner's Dam Safety Program must be reviewed by the licensee's dam safety staff and discussed with senior management on an annual basis, and that any findings, analysis, corrective measures, or revisions be submitted to the D2SI Regional Engineer.

6. Section 12.65—Independent External Audit and Peer Review

75. Section 12.65 describes the requirements of independent external audits and peer reviews, which must be completed at least once every five years for any Owner's Dam Safety Program that applies to one or more dams or other project features having a high hazard potential classification. The qualifications of the review team must be submitted to the D2SI Regional Engineer in advance, and the Regional Engineer's acceptance must be obtained prior to performing the audit or peer review. The Commission will review the qualifications to ensure that the review team has sufficient expertise and a defined plan to review the Owner's Dam Safety Program. The findings of the external audit or peer review team must be documented in a report to be reviewed by licensee staff, including senior management, and submitted to the Regional Engineer.

C. Public Safety and Miscellaneous Updates

76. This NOPR also proposes several changes to subparts A, B, C, and E of 18 CFR part 12, most of which are minor in nature and necessary to ensure consistency with the replaced subpart D and new subpart F. The two notable proposed revisions relate to the reporting of public safety incidents and the development of public safety plans and their submittal to the Commission.

1. Subpart A—General Provisions

77. Subpart A sets forth general provisions and definitions that apply to 18 CFR part 12. The proposed rule would update or add several definitions and make other minor changes to ensure consistency with replaced subpart D and new subpart F. Section 12.3(b)(4) provides a list of conditions affecting the safety of project works. Two of these conditions would be updated to ensure their definitions are consistent as applied in current practice. In addition, ''overtopping of any dam, abutment, canal, or water conveyance'' would be added to the list of conditions that could affect project safety. New definitions for ''water conveyance,'' ''Engineering Guidelines,'' and ''Owner's Dam Safety Program'' would also be added. All other revisions in subpart A are proposed to ensure consistent terminology and to update internal references.

78. Section 309 of the FPA authorizes the Commission ''to perform any and all acts, and to . . . issue . . . such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of the [FPA],'' and FPA section 31 gives the Commission authority to enforce legal and regulatory requirements. Non-compliance with dam safety directives could result in the Commission taking actions such as issuing a cease generation order, assessing civil penalties, or revoking the project's license pursuant to section 31 of the FPA. Accordingly, the proposed addition of § 12.4(d) makes clear that a licensee's failure to comply with any order or directive issued under part 12 by the Commission, a Regional Engineer, or other authorized Commission representative may result in sanctions as noted above.

2. Subpart B—Reports and Records

79. Subpart B sets forth requirements for reporting, verifying, and providing records to the Commission regarding dam safety-related matters, including public safety incidents. The Commission proposes minor revisions to ensure consistency with other sections of the regulations and the dam safety program as implemented. In addition, the proposed rule would require additional reporting of public safety-related incidents that involve deaths, serious injuries, or rescues.

80. The proposed revisions to § 12.10(a)(1) express the Commission's preference that oral reports of conditions affecting the safety of a project or its works are made within 72 hours of discovery of the condition. The reporting of an incident to the Commission must not in any way inhibit an emergency response to that incident.

81. The proposed revisions to § 12.10(b) would require the reporting of rescues in addition to deaths and serious injuries, as well as clarify what constitutes a project-related incident. For precision and to use terminology that is generally accepted in the dam safety community, we propose to replace the term ''project-related accident'' with ''project-related incident.'' Currently, § 12.10(b)(4) defines ''project-related,'' as ''any deaths or serious injuries involving a dam, spillway, intake, or power line, *or which take place at or immediately above or below a dam.*''[36] In our experience, the final clause of the definition has been the most problematic for licensees to apply, often leading licensees to report as project-related those deaths or serious injuries that occur near a dam but are wholly unrelated to the project or its operation. By revising the definition of ''project-related,'' we intend to make clear that an incident is project-related only if it occurs at project works, involves changes in water levels resulting from operations of project works, or is otherwise attributable to the project or its operation.

82. The proposed revisions to § 12.12(b)(3) permit storage media other than microform, which is consistent with part 125 of the Commission's regulations. Section 12.12(d) is added to require the licensee to provide physical and electronic records to the D2SI

[35] FERC, *Outline for Owner's Dam Safety Program—Table of Contents, https://www.ferc.gov/sites/default/files/2020-04/outline-with-discussion.pdf.*

[36] 18 CFR 12.10(b)(4) (emphasis added).

Regional Engineer for all projects subject to subpart D, or as requested by the D2SI Regional Engineer, for which the information is necessary for the Commission to ensure the safety of the project works. The existing § 12.12(b)(2)(ii)(A) already grants the Regional Engineer the authority to require that an applicant or licensee submit such reports or information and is unchanged; this provision has historically been applied to all projects subject to subpart D through the requirement to develop, maintain, and submit a Supporting Technical Information Document, which is described in the Engineering Guidelines. Neither of these requirements represent a change in D2SI practice.

3. Subpart C—Emergency Action Plans

83. Subpart C sets forth requirements related to emergency action plans. The Commission proposes only minor revisions to §§ 12.20, 12.22, and 12.24 to ensure consistency with the hydropower filing guidelines available on the Commission's website, terminology with respect to the Engineering Guidelines, and to update cross-references to other sections in this part.

4. Subpart E—Other Responsibilities of Applicant or Licensee

84. Subpart E sets forth other applicant and licensee responsibilities, including the requirement to install warning and public safety devices, and test spillway gates. The Commission proposes to replace one section and update another to codify a function of the dam safety program as currently implemented and to ensure the use of consistent terminology in conjunction with the proposed replacement of subpart D. Subpart E will be redesignated as §§ 12.50 to 12.54 to accommodate the proposed inclusion of additional sections in subpart D. These proposed revisions to subpart E do not represent a change in practice.

85. The proposed revisions to § 12.52 (warning and safety devices; currently § 12.42) preserve the current regulatory requirement that licensees must install, operate, and maintain warning and safety devices to protect the public, with a minor revision to ensure consistency with the rest of part 12. Proposed § 12.52(b) codifies existing D2SI guidance that the Commission may require a licensee to submit a public safety plan that documents the installation, operation, and maintenance of public safety devices.[37]

86. Finally, we propose to revise § 12.54 (testing spillway gates; currently § 12.44) to replace the term ''periodic inspection'' with the more generic term ''an inspection.'' This change in terminology will ensure that Commission staff can continue to verify the operability of spillway gates during their routine inspections, and will prevent this section from being misconstrued as applying only to a periodic inspection as it is proposed to be defined and described in subpart D of this NOPR.

III. Regulatory Requirements

A. Information Collection Statement

87. The Paperwork Reduction Act[38] requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (including reporting, record keeping, and public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contemplated by proposed rules (including deletion, revision, or implementation of new requirements).[39] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this proposed rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

88. The following discussion describes and analyzes the collections of information modified by this proposed rule.

89. The Commission solicits comments on the Commission's need for the proposed information collection in this NOPR and in draft Chapters 15 through 18 of the Engineering Guidelines,[40] whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. All burden estimates for all proposed information collection activities (including those in draft Chapters 15 through 18 of the Engineering Guidelines) are discussed in this NOPR and in the Paperwork Reduction Act supporting statement.

90. Interested persons may submit questions about the information collection activities by contacting Ellen Brown, Office of the Executive Director, at *DataClearance@ferc.gov,* or (202) 502–8663. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer]. Due to security concerns, comments should be sent directly to *www.reginfo.gov/public/do/PRAMain.* Comments submitted to OMB should be sent within 60 days of publication of this notice in the **Federal Register** and refer to FERC–517 and OMB Control No. 1902–TBD.

91. Please submit to the Commission copies of comments concerning the collection of information and the associated burden estimates (identified by Docket No. RM20–9–000) by either of the following methods:

- *Electronic Filing through the Commission's website: https://www.ferconline.ferc.gov/eFiling.aspx;* or
- *Mail/Express Services:* 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.

92. *Public Reporting Burden:* In this NOPR, the Commission proposes to establish two tiers of Independent Consultant's Safety Inspection Reports, further develop the Owner's Dam Safety Program, and require reporting of rescues that occur at hydroelectric projects. The NOPR, in conjunction with the corresponding updates to the Engineering Guidelines, would revise and add some information collection activities in 18 CFR part 12.

93. The proposed revisions to 18 CFR part 12, subpart D (independent consultant inspections), if adopted, would not affect the current five-year filing cycle for Independent Consultant's Safety Inspection Reports; however, they would modify the scope

[37] FERC, *Guidelines for Public Safety at Hydropower Projects* (Mar. 1992), *https://www.ferc.gov/sites/default/files/2020-04/public-safety.pdf.*

[38] 44 U.S.C. 3501–3521.

[39] *See* 5 CFR 1320.

[40] Concurrently with issuance of this NOPR, the Commission is issuing for public comment the draft chapters of the Engineering Guidelines in Docket Nos. AD20–20–000 (Chapter 15—Supporting Technical Information Document), AD20–21–000 (Chapter 16—Part 12D Program), AD20–22–000 (Chapter 17—Potential Failure Mode Analysis), and AD20–23–000 (Chapter 18—Level 2 Risk Analysis). *See supra* P 20.

of reports on an alternating cycle, such that the reports would alternate between a periodic inspection (a reduction in scope compared to current inspection requirement) and a comprehensive assessment (an increase in scope compared to current inspection requirement). The hydroelectric facilities regulated by the Commission vary greatly in size and complexity, and there is no single representative project. To evaluate the burden associated with the proposed revisions to Independent Consultant's Safety Inspection Reports, Commission staff developed separate cost estimates for ''Simple'' and ''Complex'' hydroelectric facilities, which are listed in the table below. Commission staff recognizes that there will be projects with annualized costs less than the ''Simple'' estimate or greater than the ''Complex'' estimate, but Commission staff believe the values presented are appropriately representative when averaged across the total inventory of hydroelectric projects and respondents. The assumption underlying these burden estimates is that one-half of licensed projects can be represented by each category.[41]

94. The proposed addition of 18 CFR part 12, subpart F (Owner's Dam Safety Program) would codify existing requirements for the preparation or collection of information. Those licensees who are required to prepare an Owner's Dam Safety Program, due to the hazard potential classification of their licensed project(s), have already done so. When a new license is issued for a non-constructed or previously unlicensed project, the Commission includes a license article requiring an Owner's Dam Safety Program if warranted. There may be situations in which a project's hazard potential classification increases from low to either significant or high (*e.g.,* due to new housing development within the hypothetical inundation area). If that licensee has no other projects classified as significant or high (*i.e.,* does not have an Owner's Dam Safety Program), then the licensee would be required to prepare a new Owner's Dam Safety Program. However, this is not expected to occur frequently or with any regularity. Thus, Commission staff estimates no added incremental burden or cost from the proposed addition of subpart F.

95. The proposed minor revisions to 18 CFR part 12, subpart B would require licensees to report the rescue of any person that occurs at hydroelectric facilities, which is in addition to existing requirements that licensees report public safety incidents that result in the death or serious injury of any person.

96. Table 1 itemizes the estimated annual burden[42] and direct cost[43] of the proposed changes due to this NOPR. Record keeping requirements are included in the burden and cost estimates for the development and collection of the data and reports.

TABLE 1—ANNUAL BURDEN AND DIRECT COST CHANGES PROPOSED BY THE NOPR IN DOCKET NO. RM20–9–000[44]

Type of respondent	Type of response	Number of respondents	Average number of annual responses per respondent	Average annual burden hours and cost per response	Total number of annual responses (col. C × col. D)	Total annual burden hours and cost (col. E × col. F)
A	B	C	D	E	F	G
Applicant[45] or Licensee[46]	Reports of Project-Related Deaths, Serious Injuries, or Rescues[47].	[48] 65	[49] 2.14	2 hrs.; $166	139	278 hrs.; $23,074.
Licensee of Simple Hydro Facility[50].	Ind. Cons. Team Proposals and Reports on PIs and CAs[51].	[52] 375	[53] 0.1	0 hrs.; $0	37.5	0 hrs.; $0.
Licensee of Complex Hydro Facility.	Ind. Cons. Team Proposals and Reports on PIs and CAs[54].	375	0.1	0.6 hrs.;[55] $49.80.	37.5	22.5 hrs.; $1,867.50.

[41] The cost data presented in the table is the change in annualized cost based on the proposed changes described in the NOPR. The annualized costs are based on the total cost, in 2020 dollars, over the typical 10-year Part 12D inspection cycle, which comprises one Comprehensive Assessment and one Periodic Inspection, and the associated activities. The scope of each inspection and associated reporting requirements are defined in the proposed rules.

[42] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[43] Direct costs are those costs (generally labor costs) associated with the applicant's or licensee's staff in the performance of the efforts related to the proposed rule change. These do not include the costs for professional services, although the direct costs do include the costs associated with the applicant's or licensee's administration and execution of contracts for professional services.

[44] The Commission staff believes that industry is similarly situated in terms of cost for wages and benefits. Therefore, we are using the FERC 2020 average cost (for wages plus benefits) for one FERC full-time equivalent (FTE) of $172,329 (or $83.00 per hour).

[45] As defined by 18 CFR 12.1(a)(2).

[46] As defined by 18 CFR 12.1(a)(1) and (a)(3).

[47] Proposed revisions of 18 CFR 12.10(b)(1), 12.10(b)(2), and 12.10(b)(4) for written reports of project-related deaths, serious injuries, or rescues at project works or involving project operations.

[48] Commission staff assumes the average number of respondents who will file a 12.10(b) public safety incident report documenting a rescue at a hydroelectric project will equal the average number of respondents who filed a 12.10(b) public safety incident report documenting a death or serious injury over the 10-year period from January 1, 2009 through December 31, 2018.

[49] Commission staff assumes the average number of 12.10(b) public safety incident reports documenting rescues at hydroelectric projects will equal the average number of 12.10(b) reports for deaths and serious injuries over the 10-year period from January 1, 2009 through December 21, 2018.

[50] Commission staff estimates no incremental change in direct costs due to the proposed rule change as compared to the current burden and costs.

[51] Includes direct costs associated with the preparation and submittal of Independent Consultant Team Proposals (proposed 18 CFR 12.34) and Reports for Periodic Inspections and Comprehensive Assessments (proposed 18 CFR 12.36 and 12.38).

[52] Approximately 750 project developments licensed by the Commission are subject to the reporting requirements. This table defines a single response as the consolidated filings associated with the typical ten-year cycle for Independent Consultant's Safety Inspections, which would take effect following implementation of a final rule. A single response would include one each of the reports and other filings required under the scope of a Periodic Inspection and a Comprehensive Assessment. Thus, the total number of responses over a ten-year period will be the number of projects (750), divided equally between the ''Simple'' and ''Complex'' categories of hydroelectric facilities.

[53] As previously noted, this table defines a single response as the consolidated filings associated with the typical ten-year cycle for Independent Consultant's Safety Inspections. Therefore, the number of annual responses is averaged over the ten-year period, or 0.1 responses on average per year.

[54] *See supra* note 51.

[55] Burden costs include hourly wages estimated based on complexity of project, scope of inspection, experience and number of assigned staff, and were compared to industry estimates provided by fewer than nine industry representatives who were contacted by Commission staff.

[56] Proposed 18 CFR 12.33(a) includes a provision for licensees to submit a written request to be excluded from the requirements of 18 CFR Subpart D in extraordinary circumstances.

[57] Includes direct costs associated with the preparation and submittal of Owner's Dam Safety Program Document (proposed 18 CFR 12.60 and 12.63), Statements of Qualifications for External Audit or Peer Review (proposed 18 CFR 12.65(b)), and Reports of Audits or Peer Review (proposed 18 CFR 12.65(c)).

TABLE 1—ANNUAL BURDEN AND DIRECT COST CHANGES PROPOSED BY THE NOPR IN DOCKET NO. RM20–9–000 [44]—Continued

Type of respondent	Type of response	Number of respondents	Average number of annual responses per respondent	Average annual burden hours and cost per response	Total number of annual responses (col. C × col. D)	Total annual burden hours and cost (col. E × col. F)
Licensee	Exemption Requests [56]	10	1	2 hrs.; $166	10	20 hrs.; $1,660
Licensee of Dam or Other Project Feature with a High or Significant Hazard Potential.	Owner's Dam Safety Program Submittals [57].	Staff estimates no incremental change in direct costs due to the proposed rule change as compared to the current burden and costs.				
Totals		825			224	320.5 hrs.; $26,601.50

97. Table 2 itemizes the estimated annual burden and annual contracting costs for professional services [58] of the information collections that would be affected by this NOPR. Record keeping requirements are included in the burden and cost estimates for the development and collection of the data and reports.

TABLE 2—ANNUAL BURDEN AND CONTRACTING COST FOR PROFESSIONAL SERVICES CHANGES PROPOSED BY THE NOPR IN DOCKET NO. RM20–9–000

Type of respondent	Type of response	Number of respondents	Average number of annual responses per respondent	Average annual burden hours and cost per response	Total number of annual responses (col. C × col. D)	Total annual burden hours and cost (col. E × col. F)
A	B	C	D	E	F	G
Applicant [59] or Licensee [60]	Reports of Project-Related Deaths, Serious Injuries, or Rescues [61].	There are no anticipated costs for contracted professional services affected by this proposed rule change.				
Licensee of Simple Hydro Facility	Ind. Cons. Team Proposals and Reports on PIs and CAs [62].	[63] 375	[64] 0.1	12 hrs.; [65] $2,524.40.	37.5	450 hrs.; $94,665.
Licensee of Complex Hydro Facility.	Ind. Cons. Team Proposals and Reports on PIs and CAs [66].	375	0.1	32 hrs.; [67] $6,979.90.	37.5	1,200 hrs.; $261,746.25.
Licensee	Exemption Requests [68]	There are no anticipated costs for contracted professional services affected by this proposed rule change.				
Licensee of Dam or Other Project Feature with a High or Significant Hazard Potential.	Owner's Dam Safety Program Submittals [69].	Commission staff estimates no incremental change in costs for contracted professional services due to the proposed rule change as compared to the current burden and costs.				
Totals		750			75	1,650 hrs.; $356,411.25

98. Table 3 itemizes the estimated annual burden and total cost (direct costs [from Table 1] and costs for contracted professional services [from Table 2]), of the proposed changes due to this NOPR. Record keeping requirements are included in the burden and cost estimates for the development and collection of the data and reports.

[58] Contracting costs include costs for professional services, including labor, travel and subsistence, and other indirect costs incurred by the contractor or consultant. Contracting costs do not include direct costs incurred by the applicant or licensee in the administration or execution of the contract for professional services; those are included in the previous table, as applicable.

[59] As defined by 18 CFR 12.1(a)(2).

[60] As defined by 18 CFR 12.1(a)(1) and (a)(3).

[61] Proposed revisions of 18 CFR 12.10(b)(1), (b)(2), and (b)(4) for written reports of project-related deaths, serious injuries, or rescues at project works or involving project operations.

[62] Includes contracting costs for professional services associated with the preparation and submittal of Independent Consultant Team Proposals (proposed 18 CFR 12.34) and Reports for Periodic Inspections and Comprehensive Assessments (proposed 18 CFR 12.36 and 12.38).

[63] Approximately 750 project developments licensed by the Commission are subject to the reporting requirements. This table defines a single response as the consolidated filings associated with the typical ten-year cycle for Independent Consultant's Safety Inspections, which would take effect following implementation of a final rule. A single response would include one each of the reports and other filings required under the scope of a Periodic Inspection and a Comprehensive Assessment. Thus, the total number of responses over a ten-year period will be the number of projects (750), divided equally between the ''Simple'' and ''Complex'' categories of hydroelectric facilities.

[64] As previously noted, this table defines a single response as the consolidated filings associated with the typical ten-year cycle for Independent Consultant's Safety Inspections. Therefore, the number of annual responses is averaged over the ten-year period, or 0.1 responses on average per year.

[65] Burden costs include hourly wages estimated based on complexity of project, scope of inspection, experience and number of assigned staff, and were compared to industry estimates provided by fewer than nine industry representatives.

[66] *See supra* note 62.

[67] *See supra* note 65.

[68] Proposed 18 CFR 12.33(a) includes a provision for licensees to request a written request to be excluded from the requirements of 18 CFR Subpart D in extraordinary circumstances.

[69] Includes costs for contracted professional services associated with the preparation and submittal of Owner's Dam Safety Program Document (proposed 18 CFR 12.60 and 12.63), Statements of Qualifications for External Audit or Peer Review (proposed 18 CFR 12.65(b)), and Reports of Audits or Peer Review (proposed 18 CFR 12.65(c)).

TABLE 3—TOTAL ANNUAL BURDEN AND COST CHANGESPROPOSED BY THE NOPR IN DOCKET NO. RM20–9–000

Type of respondent	Type of response	Number of respondents	Average number of annual responses per respondent	Average annual burden hours and cost per response	Total number of annual responses (col. C × col. D)	Total annual burden hours and cost (col. E × col. F)
A	B	C	D	E	F	G
Applicant [70] or Licensee [71]	Reports of Project-Related Deaths, Serious Injuries, or Rescues [72].	65	2.14	2 hrs.; $166	139	278 hrs.; $23,074.
Licensee of Simple Hydro Facility [73].	Ind. Cons. Team Proposals and Reports on PIs and CAs [74].	375	0.1	12 hrs.; $2,524.40.	37.5	450 hrs.; $94,665.
Licensee of Complex Hydro Facility [75].	Ind. Cons. Team Proposals and Reports on PIs and CAs.	375	0.1	32.6 hrs.; $7,029.70.	37.5	1,222.5 hrs.; $263,613.75.
Licensee	Exemption Requests [76]	10	1	2 hrs.; $166	10	20 hrs.; $1,660.
Licensee of Dam or Other Project Feature with a High or Significant Hazard Potential.	Owner's Dam Safety Program Submittals [77].	Staff estimates no incremental change in direct costs due to the proposed rule change as compared to the current burden and costs.				
Total for Direct Costs and Contracting Costs due to NOPR in RM20–9–000.		825			224	1,970.5 hrs.; $383,012.75.

99. Title: FERC–517, Safety of Water Power Projects and Project Works.

100. *Action:* Revision to the scope of Independent Consultant's Safety Inspection Reports, Owner's Dam Safety Program, and addition of reporting requirements related to public safety incidents at hydropower projects.

101. *OMB Control No.:* 1902–TBD.

102. *Respondents:* Hydropower licensees (and applicants, as applicable), including municipalities, businesses, private citizens, and for-profit and not-for-profit institutions.

103. *Frequency of Information:* On occasion, except for reports on periodic inspections and comprehensive assessment, which must be submitted as proposed under 18 CFR 12.40:

- For any project that was inspected in accordance with 18 CFR part 12 prior to January 1, 2021, a periodic inspection or comprehensive assessment must be completed, and a report on it filed, within five years of the due date of the most recent report. In addition, the first comprehensive assessment must be completed, and the report on it filed, by December 31, 2034.
- A licensed project development is subject to a different set of deadlines if the development was not inspected in accordance with 18 CFR part 12 prior to January 1, 2021, under the Commission's rules in effect on January 1, 2020. In these circumstances, the first comprehensive assessment and the report on it are due:
  - Not later than two years after the date of issuance of the order licensing a development or amending a license to include that development, if the development meets the criteria specified in §§ 12.30(a)(1) or 12.30(a)(2), and was constructed before the date of issuance of such order.
  - Not later than five years after the date of issuance of the order licensing that development, or amending a license to include that development, if the development was constructed after the date of issuance of such order.
  - No later than two years after a date specified by the Regional Engineer, for other developments that were not inspected prior to January 1, 2021, under the Commission's rules in effect on January 1, 2020.

104. *Necessity of Information:* The Commission proposes the changes in this NOPR in order to enhance the ability of Commission staff to protect the safety of dams and the public; to reduce the risk to life, health, and property associated with hydropower projects; and to comply with guidance from FEMA's Interagency Committee on Dam Safety.

105. *Internal Review:* The Commission has reviewed the proposed changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.[78]

106. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], by email to *DataClearance@ferc.gov,* or by phone (202) 502–8663.

B. Environmental Analysis

107. The Commission is required to prepare an environmental assessment or an environmental impact statement for any action that may have a significant effect on the human environment.[79] Excluded from this requirement are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.[80] This proposed rule proposes to revise the Commission's dam safety regulations by incorporating a two-tier structure for independent consultant safety inspections, codifying guidance requiring licensees to develop an owner's dam safety program and a public safety plan; expanding the scope of public safety incident reporting; and incorporating various minor revisions. Because this proposed rule does not

[70] As defined by 18 CFR 12.1(a)(2).

[71] As defined by 18 CFR 12.1(a)(1) and (a)(3).

[72] Proposed revisions of 18 CFR 12.10(b)(1), (b)(2), and (b)(4) for written reports of project-related deaths, serious injuries, or rescues at project works or involving project operations.

[73] Includes direct and contracting burden and cost.

[74] Includes direct costs associated with the preparation and submittal of Independent Consultant Team Proposals (proposed 18 CFR 12.34) and Reports for Periodic Inspections and Comprehensive Assessments (proposed 18 CFR 12.36 and 12.38).

[75] Includes direct and contracting burden and cost.

[76] Proposed 18 CFR 12.33(a) includes a provision for Licensees to request a written request to be excluded from the requirements of 18 CFR Subpart D in extraordinary circumstances.

[77] Includes direct costs associated with the preparation and submittal of Owner's Dam Safety Program Document (proposed 18 CFR 12.60 and 12.63), Statements of Qualifications for External Audit or Peer Review (proposed 18 CFR 12.65(b)), and Reports of Audits or Peer Review (proposed 18 CFR 12.65(c)).

[78] Commission staff contacted fewer than nine parties to obtain supporting information in order to benchmark burden estimates.

[79] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[80] 18 CFR 380.4(a)(2)(ii).

substantially change the effect of the Commission's part 12 regulations, preparation of an environmental assessment or environmental impact statement is not required.

C. Regulatory Flexibility Act

108. The Regulatory Flexibility Act of 1980 (RFA) [81] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.[82] In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.[83]

109. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[84] The SBA size standard for electric utilities is based on the number of employees, including affiliates.[85] Under SBA's current size standards, a hydroelectric power generator (NAICS code 221111) [86] is small if, including its affiliates, it employs 500 or fewer people.[87]

110. If enacted, the proposed revisions to part 12, subpart D would directly affect all hydropower licensees that are currently required to file Independent Consultant's Safety Inspection Reports. Since the number of licensed projects per respondent varies from one to more than 50, the number of respondents does not correlate directly to the number of responses. Based on data over the preceding ten-year-period, Commission staff estimated the expected number of responses from entities that qualify as small. In total, approximately 132 entities qualify as small and would be expected to file approximately 225 responses (30%) with the Commission over the ten-year cycle. The remaining 525 responses (70%) would be filed by 106 entities that do not qualify as small.

111. The Commission notes that the projects owned by entities that qualify as small entities are typically smaller and/or less complex than those owned by large entities. Thus, the annual incremental cost to small entities would likely skew towards the ''Simple Hydroelectric Facility'' category presented in the burden estimates provided above in the Information Collection Statement section. In addition, the proposed rule incorporates provisions that grant Commission staff the authority, upon demonstration by the licensee and Commission review and acceptance of appropriate justification, to waive or reduce the scope of specific components of an Independent Consultant's Safety Inspection (*e.g.,* waiving the requirement to perform a PFMA or risk analysis) or to change the type of inspection report (*e.g.,* by allowing an inspection scheduled as a comprehensive assessment to be performed instead as a periodic inspection). The Commission has included these provisions to focus effort on those projects that present greater risk to life, health, and property; and to alleviate the potential economic impact on licensees of simple projects that present less risk. Since the burden estimates include all components of an Independent Consultant's Safety Inspection, utilization of these provisions may result in a lower incremental cost for small entities.

112. The proposed addition of part 12, subpart F, which would codify the Owner's Dam Safety Program, would only apply to entities that are responsible for one or more projects classified as having a high hazard potential. The Commission expects the Owner's Dam Safety Program to improve communication and understanding within licensee organizations as to their responsibilities for ensuring dam safety and protection of the public, and may contribute to an increased likelihood that potential dam safety issues are caught and addressed before they present an imminent danger to life safety or property.

113. Because those licensees required to prepare an Owner's Dam Safety Program due to their project's hazard potential classification have already done so,[88] the Commission does not anticipate that the proposed codification of subpart F will impose any additional burden or cost on licensees, regardless of their status as a small or large entity.

114. With respect to the filing of public safety incidents involving the rescue of any person at a hydroelectric facility, the Commission estimates that most affected entities qualify as small entities. But, as reflected in the burden and cost estimates provided above, the Commission expects an additional two burden hours (and corresponding $166, an amount that would not be considered significant) for licensees or applicants, regardless of their status as small or large.

115. While the proposed revisions to subpart D may have some increased economic impact on a limited number of small entities, these improvements to the independent consultant safety inspection process are necessary, and the associated costs justified, by the Commission's Congressionally-mandated mission to ensure the protection of life, health, and property from risks associated with licensed hydroelectric facilities. In addition, the proposed revisions to subpart D are intended to help prevent future dam safety incidents that could potentially result in significant economic impacts on small entities (*e.g.,* financial costs associated with causing life loss or property damage, major project repairs, lost revenue due to the inability to operate the project, etc.).

116. In summary, based on the estimated costs included in Table 3 above, the estimated economic impacts on small entities as a result of the proposed rule could range from approximately $166 (for the submittal of a one-time request for an exemption from part 12, subpart D) to over $7,000 per year for each complex project. A representative cost for a typical small entity with one or more simple projects would be approximately $2,500 per year per project subject to part 12, subpart D.[89] Currently, Commission staff estimates that over eighty percent of the small entities have two or fewer projects subject to subpart D.

117. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

D. Comment Procedures

118. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due September 22, 2020. Comments must refer to Docket No. RM20–9–000, and must include the

[81] 5 U.S.C. 601–612.

[82] *Id.* 603(c).

[83] *Id.* 605(b).

[84] 13 CFR 121.101.

[85] *Id.* 121.201.

[86] The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, *North American Industry Classification System, https://www.census.gov/eos/www/naics/.*

[87] 13 CFR 121.201 (Sector 22—Utilities).

[88] *See supra* P 94.

[89] Commission staff estimates that more than half of the 132 small entities have one or more simple projects and no complex projects.

commenter's name, the organization they represent, if applicable, and their address.

119. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

120. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

121. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

E. Document Availability

122. 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 print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

123. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

124. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 12

Electric power, Reporting and recordkeeping requirements, Safety.

By direction of the Commission.

Issued: Issued July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Federal Energy Regulatory Commission proposes to amend part 12, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS

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

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

Subpart A—General Provisions

■ 2. Amend § 12.3 by:

■ a. Revising paragraphs (b)(3), (b)(4) introductory text, and (b)(4)(ii) and (v);

■ b. Redesignating paragraph (b)(4)(xiii) as (b)(4)(xix);

■ c. Adding a new paragraph (b)(4)(xiii);

■ d. Redesignating paragraph (b)(11) as (b)(15);

■ e. Adding new paragraph (b)(11); and

■ f. Adding paragraphs (b)(12 through (14).

The revisions and addition read as follows:

§ 12.3 Definitions.

* * * * *

(b) * * *

(3) *Authorized Commission representative* means the Director of the Office of Energy Projects, the Director of the Division of Dam Safety and Inspections, the Regional Engineer, or any other member of the Commission staff whom the Commission may specifically designate.

(4) *Condition affecting the safety of a project or project works* means any condition, event, or action at the project which might compromise the safety, stability, or integrity of any project work or the ability of any project work to function safely for its intended purposes, including navigation, water power development, or other beneficial public uses, including recreation; or which might otherwise adversely affect life, health, or property. Conditions affecting the safety of a project or project works include, but are not limited to:

* * * * *

(ii) Failure of, misoperation of, or failure to operate when attempted any facility that controls the release or storage of impounded water, such as a gate or a valve;

* * * * *

(v) Internal erosion, piping, slides, or settlements of materials in any dam, foundation, abutment, dike, or embankment;

* * * * *

(xiii) Overtopping of any dam, abutment, canal, or water conveyance;

* * * * *

(11) *Water conveyance* means any canal, penstock, tunnel, flowline, flume, siphon, or other feature, constructed or natural, which facilitates the movement of water for the generation of hydropower, environmental benefit, or other purpose required by the project license.

(12) *Guidelines* means the Engineering Guidelines for the Evaluation of Hydropower Projects established, and from time to time revised, by the Director of the Division of Dam Safety and Inspections, and available on the Commission's website.

(13) *Owner's Dam Safety Program* means the written document that formalizes a licensee's dam safety program, including, but not limited to, the licensee's dam safety policies; objectives; expectations; responsibilities; training program; communication, coordination, and reporting; record keeping; succession planning; continuous improvement; and audits and assessments.

(14) *Hazard potential* for any dam, canal, or water conveyance is a classification based on the potential consequences in the event of failure or misoperation of the dam, canal, or water conveyance, and is subdivided into categories (*e.g.,* Low, Significant, High).

(i) *High hazard potential* generally indicates that failure or misoperation of the project feature will probably cause loss of human life.

(ii) *Significant hazard potential* and *low hazard potential* generally indicate that failure or misoperation will probably not cause loss of human life but may have some amount of economic, environmental, or other consequences.

(iii) *Additional information.* Other information on hazard potential classifications is provided in the Guidelines.

* * * * *

■ 3. Amend § 12.4 by:

■ a. Revising paragraphs (b)(2)(ii)(B) and (b)(2)(iii)(A) and (B);

■ b. Adding paragraphs (b)(2)(iii)(C) and (D);

■ c. Revising paragraph (c)(1), (c)(2) introductory text, and (c)(3); and

■ d. Adding paragraph (d).

The revisions and addition read as follows:

§ 12.4 Staff administrative responsibility and supervisory authority.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) Any condition affecting the safety of a project or project works or any death, serious injuries, or rescues that occur at, or might be attributable to, the water power project;

(iii) * * *

(A) Any emergency action plan filed under subpart C of this part;

(B) Any Owner's Dam Safety Program filed under subpart F of this part;

(C) Any plan of corrective measures, including related schedules, submitted after the report of an independent consultant pursuant to § 12.36 or § 12.38 or any other inspection report; or

(D) Any public safety plan filed under § 12.52(b).

* * * * *

(c) * * *

(1) Any order or directive issued under this part by a Regional Engineer or other authorized Commission representative may be appealed to the Commission under § 385.207 of this chapter.

(2) Any order or directive issued under this part by a Regional Engineer or other authorized Commission representative is immediately effective and remains in effect until:

* * * * *

(3) An appeal or motion for rescission, amendment, or stay of any order or directive issued under this part must contain a full explanation of why granting the appeal or the request for rescission or amendment of the order or directive, or for stay for the period requested, will not endanger life, health, or property.

(d) *Failure to comply.* If a licensee fails to comply with any order or directive issued under this part by the Commission, a Regional Engineer, or other authorized Commission representative, the licensee may be subject to sanctions, including, but not limited to, civil penalties, orders to cease generation, or license revocation.

Subpart B—Reports and Records

■ 4. Amend § 12.10 by revising the second sentence of paragraph (a)(1) and by revising paragraph (b) to read as follows:

§ 12.10 Reporting safety-related incidents.

(a) * * *

(1) * * * The initial oral report must be made as soon as practicable after that condition is discovered, preferably within 72 hours, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency action procedure.

* * * * *

(b) *Deaths, serious injuries, or rescues.* (1) Promptly after becoming aware of any drowning or other incident resulting in death, serious injury, or rescue that occurs at the project works or involves project operation, the applicant or licensee must report that incident to the Regional Engineer in writing, including a description of the cause and location of the incident.

(2) The written report of any death, serious injury, or rescue that occurs at the project works or involves project operations, and is considered or alleged to be project related, must also describe any remedial actions taken or proposed to avoid or reduce the chance of similar occurrences in the future and be verified in accordance with § 12.13.

(3) Incidents that are not project-related may be reported by providing a copy of a clipping from a newspaper article, if available.

(4) For the purposes of this paragraph, *project related* includes any deaths, serious injuries, or rescues that:

(i) Involve a project dam, spillway, intake, outlet works, tailrace, power canal, powerhouse, powerline, other water conveyance, or other appurtenances; or

(ii) Involve changes in water levels or flows caused by generating units, project gates, or other flow regulating equipment; or

(iii) Are otherwise attributable to project works and/or project operations.

■ 5. Amend § 12.12 by revising paragraphs (a)(1)(ii) and (b)(3) and adding paragraph (d) to read as follows:

§ 12.12 Maintenance of records.

(a) * * *

(1) * * *

(ii) Instrumentation observations and data collected during construction, operation, or maintenance of the project, including continuously maintained tabular records and graphs illustrating the data collected pursuant to § 12.51; and

* * * * *

(b) * * *

(3) In accordance with the provisions of part 125 of this chapter, the applicant or licensee may select its own storage media to maintain original records or record copies at the project site, provided that appropriate equipment is available to view the records.

* * * * *

(d) *Provision of records.* If the project is subject to subpart D of this part, or if requested by the Regional Engineer, the applicant or licensee must provide to the Regional Engineer physical and electronic copies of the documents listed in paragraph (a)(1) of this section, except as provided in paragraph (a)(2) of this section.

Subpart C—Emergency Action Plans

§ 12.20 [Amended]

■ 6. Amend § 12.20 in paragraph (a) by removing the words ''three copies of''.

§ 12.22 [Amended]

■ 7. Amend § 12.22 as follows:

■ a. In paragraph (a)(1) introductory text, remove ''the guidelines established, and from time to time revised, by the Director of the Office of Energy Projects (available from the division of Inspections or the Regional Engineer)'' and add in its place ''the Guidelines''; and

■ b. In paragraph (a)(2) introductory text, remove ''the guidelines established by the Director of the Office of Energy Projects'' and add in its place ''the Guidelines''.

§ 12.24 [Amended]

■ 8. Amend 12.24 in paragraph (c)(3) by removing the words ''three copies of''.

■ 9. Revise subpart D to read as follows:

Subpart D—Review, Inspection, and Assessment by Independent Consultant

Sec.

12.30 Applicability.
12.31 Definitions.
12.32 General inspection requirement.
12.33 Exemption.
12.34 Approval of independent consultant team.
12.35 Periodic inspection.
12.36 Report on a period inspection.
12.37 Comprehensive assessment.
12.38 Report on a comprehensive assessment.
12.39 Evaluation of spillway adequacy.
12.40 Time for inspections and reports.
12.41 Corrective measures.

Subpart D—Review, Inspection, and Assessment by Independent Consultant

§ 12.30 Applicability.

This subpart applies to any licensed project development that:

(a) Has a dam—

(1) That is more than 32.8 feet (10 meters) in height above streambed, as defined in § 12.31(d); or

(2) With an impoundment gross storage capacity of more than 2,000 acre-feet (2.5 million cubic meters), as defined in § 12.31(e);

(b) That has a project feature (dam, canal, or water conveyance) or any portion thereof that has a high hazard potential, as defined in § 12.3(b)(14); or

(c) Is determined by the Regional Engineer or other authorized Commission representative to require inspection by an independent consultant under this subpart.

§ 12.31 Definitions.

For purposes of this subpart:

(a) *Independent consultant* means any person who:

(1) Is a licensed professional engineer;

(2) Has at least 10 years of experience and expertise in dam design and construction and in the evaluation and assessment of the safety of existing dams;

(3) Is not an employee of the licensee or its affiliates;

(4) Has not been an employee of the licensee or its affiliates within two years prior to performing engineering and/or scientific services for an inspection or assessment under this subpart; and

(6) Has not been an agent acting on behalf of the licensee or its affiliates, prior to performing engineering and/or scientific services for an inspection or assessment under this subpart, in a manner and for a time period as defined in the Guidelines.

(b) *Independent consultant team* means one or more independent consultant(s) and, as needed, additional qualified engineering and scientific professionals who also meet the requirements of paragraphs (a)(3) through (5) of this section that collectively have demonstrable experience and expertise in dam design, construction, and the evaluation and assessment of the safety of existing dams, commensurate with the scale, complexity, and relevant technical disciplines of the project and type of review, inspection, and assessment being performed (periodic inspection or comprehensive assessment, as defined in this section).

(c) *Height above streambed* means:

(1) For a dam with a spillway, the vertical distance from the lowest elevation of the natural streambed at the downstream toe of the dam to the maximum water storage elevation possible without any discharge from the spillway. The maximum water storage elevation is:

(i) For gated spillways, the elevation of the tops of the gates;

(ii) For ungated spillways, the elevation of the spillway crest or the top of any flashboards, whichever is higher;

(2) For a dam without a spillway, the vertical distance from the lowest elevation of the natural streambed at the downstream toe of the dam to the lowest point on the crest of the dam.

(d) *Gross storage capacity* means the maximum possible volume of water impounded by a dam with zero spill; that is, without the discharge of water over the dam or a spillway.

(e) *Periodic inspection* means an inspection that meets the requirements of § 12.35 and is performed by an independent consultant team.

(f) *Comprehensive assessment* means a project review, inspection, and assessment that meets the requirements of § 12.37 and is performed by an independent consultant team.

(g) *Previous Part 12D Inspection* means the most recent inspection performed in accordance with the provisions of this subpart (a periodic inspection, comprehensive assessment, or an inspection performed in accordance with the rules established by Order 122).

(h) *Previous Part 12D Report* means the report on the Previous Part 12D Inspection.

(i) *Grant of waiver.* The Director of the Division of Dam Safety and Inspections may, for good cause shown, grant a waiver of the 10-year requirement in paragraph (a)(2) of this section. Any petition for waiver under this paragraph must be filed in accordance with § 385.207 of this chapter.

§ 12.32 General inspection requirement.

The project works of each development to which this subpart applies, excluding transmission and transformation facilities, must be inspected on a periodic basis by an independent consultant team to identify any actual or potential deficiencies that might endanger life, health, or property, including deficiencies that may be in the condition of those project works or in the quality or adequacy of project maintenance, safety, methods of operation, analyses, and other conditions described in the Guidelines. A report must be prepared by the independent consultant team, by or under the direction of at least one independent consultant, who may be a member of a consulting firm, to document the findings and evaluations made during their inspection. The inspection must be performed by the independent consultant team, and the report must be filed by the licensee, in accordance with the procedures in this subpart and as further described in the Guidelines.

§ 12.33 Exemption.

(a) Upon written request from the licensee, the Director of the Division of Dam Safety and Inspections may grant an exemption from the requirements of this subpart in extraordinary circumstances that clearly establish good cause for exemption.

(b) Good cause for exemption may include the finding that the development in question has no dam, canal, or other water conveyance except those that meet the criteria for low hazard potential as defined in § 12.3(b)(14).

(c) An exemption from this subpart, granted prior to [EFFECTIVE DATE OF FINAL RULE], no longer constitutes an exemption from the requirements of this subpart. A licensee must submit a subsequent written request for exemption to the Director of the Division of Dam Safety and Inspections, which may be granted at the discretion of the Director.

§ 12.34 Approval of independent consultant team.

(a) The licensee must obtain written approval of the independent consultant team, from the Director of the Division of Dam Safety and Inspections, prior to the performance of a periodic inspection or comprehensive assessment under this subpart.

(b) At least 180 days prior to performing a periodic inspection or comprehensive assessment under this subpart, the licensee must submit to the Director of the Division of Dam Safety and Inspections, with a copy to the Regional Engineer, a detailed independent consultant team proposal.

(1) If the independent consultant team comprises one person, the detailed independent consultant team proposal must:

(i) Describe the experience of the independent consultant; and

(ii) Show that the independent consultant meets the requirements as defined in § 12.31(a) and (b)(2).

(2) If the independent consultant team comprises more than one person, the detailed independent consultant team proposal must:

(i) Designate one or more persons to serve as the independent consultant(s);

(ii) Show that each independent consultant meets the requirements as defined in § 12.31(a);

(iii) Describe the experience of each member of the independent consultant team; and

(iv) Show that the independent consultant team meets the requirements as defined in § 12.31(b)(2).

(c) Regardless of experience and qualifications, any independent consultant team member may be disapproved by the Director of the Division of Dam Safety and Inspections for good cause, such as having had one or more reports rejected by the Commission within the preceding five years.

§ 12.35 Periodic inspection.

A periodic inspection must include:

(a) *Review of prior reports.* The independent consultant team must review and consider all relevant reports

on the safety of the development made by or written under the direction of Federal or State agencies, submitted under Commission regulations, or made by other consultants. The independent consultant team must perform sufficient review to have, at the time of the periodic inspection, a full understanding of the design, construction, performance, condition, downstream hazard, monitoring, operation, and potential failure modes of the project works.

(b) *Physical field inspection.* The independent consultant team must perform a physical field inspection of accessible project features, including galleries, adits, vaults, conduits, earthen and concrete-lined spillway chutes, the exterior of water conveyances, and other non-submerged project features that may require specialized access to facilitate inspection. The inspection shall include review and assessment of all relevant data concerning:

(1) Settlement;
(2) Movement;
(3) Erosion;
(4) Seepage;
(5) Leakage;
(6) Cracking;
(7) Deterioration;
(8) Hydraulics;
(9) Hydrology;
(10) Seismicity;
(11) Internal stress and hydrostatic pressures in project structures and their foundations and abutments;
(12) The condition and performance of foundation drains, dam body drains, relief wells, and other pressure-relief systems;
(13) The condition and performance of any post-tensioned anchors installed, and other major modifications completed, to improve the stability of project works;
(14) The stability of critical slopes adjacent to a reservoir or project works; and
(15) Regional and site geological conditions.

(c) *Review of surveillance and monitoring plan and data.* The independent consultant team must:

(1) Review the surveillance procedures, instrumentation layout, installation details, monitoring frequency, performance history, data history and trends, and relevance to potential failure modes; and
(2) Review the frequency and scope of other surveillance activities.

(d) *Review of dam and public safety programs*—(1) *Hazard potential.* Review the potential inundation area and document any significant changes in the magnitude and location of the population at risk since the previous inspection under this subpart.

(2) *Emergency Action Plan.* If the project development is subject to subpart C of this part, review the emergency action plan, including the emergency action plan document itself, the licensee's training program, and any related time-sensitivity assessment(s).

(3) *Public Safety Program.* Review the access restrictions and public safety warning signs and devices near the project works pursuant to § 12.52.

(4) *Owner's Dam Safety Program.* If the project is subject to subpart F of this part, review the implementation of the licensee's Owners Dam Safety Program with respect to the project development being inspected under this subpart.

§ 12.36 Report on a periodic inspection.

(a) *Format.* The report must include documentation of all the items listed in § 12.35 and conform to the format prescribed by the Guidelines.

(b) *Specific evaluation.* The report must include specific evaluation of:

(1) The history of performance of the project works through visual observations, analysis of data from monitoring instruments, and previous inspections;
(2) The quality and adequacy of maintenance, surveillance, methods of project operations, and risk reduction measures for the protection of public safety and continued project operation;
(3) Potential failure modes, including:
(i) Each identified potential failure mode associated with the project works and whether any potential failure mode is active or developing; and
(ii) Whether any inspection observations or other conditions indicate that an unidentified potential failure mode is active, developing, or is of sufficient concern to warrant development through a supplemental potential failure modes analysis;
(4) Whether any observed conditions warrant reconsideration of the current hazard potential classification; and
(5) The adequacy of the project's:
(i) Emergency action plan;
(ii) Public safety program; and
(iii) Implementation of the Owner's Dam Safety Program with respect to the project development being inspected under this subpart.

(c) *Changes since the previous inspection.* The report must include a status update and evaluation of any changes since the Previous Part 12D Inspection concerning:

(1) *Hydrology.* Identify any events that may affect the conclusions of the hydrologic or hydraulic analyses of record and evaluate the effect on the safety and stability of project works.
(2) *Seismicity.* Identify any seismic events that may affect the conclusions of the seismicity analyses of record and evaluate the effect on the safety and stability of project works.
(3) *Modifications to project works.* Identify any modifications made to project works and evaluate the performance thereof with respect to the design intent.
(4) *Methods of operation.* Describe any changes to standard operating procedures, equipment available for project operation, and evaluate the effect on the safety and stability of project works.
(5) *Results of Special Inspections.* Summarize the findings of any special inspections (dive inspection, rope-access gate inspection, toe drain inspection, etc.), if any.
(6) *Previous recommendations.* List and document the status of recommendations made by the independent consultant in the Previous Part 12D Report, and any earlier recommendations that remained incomplete at the time of the Previous Part 12D Report.
(7) *Outstanding studies and studies completed since the previous inspection.* List and document the status of any studies completed since the Previous Part 12D Inspection and those that remain outstanding at the time of the periodic inspection.

(d) *Recommendations.* Based on the independent consultant team's field observations, evaluations of the project works, and the maintenance, surveillance, and methods of operation of the development, the report must contain the independent consultant's recommendations on:

(1) Any corrective measures, described in § 12.41, necessary for the structures, maintenance or surveillance procedures, or methods of operation of the project works;
(2) A reasonable time to carry out each corrective measure; and
(3) Any new or additional monitoring instruments, periodic observations, special inspections, or other methods of monitoring project works or conditions that may be required.

(e) *Dissenting views.* If the inspection and report were conducted and prepared by more than one independent consultant, the report must clearly identify and describe any dissenting views concerning the evaluations or recommendations of the report that might be held by any individual consultant.

(f) *List of participants.* The report must identify all professional personnel who have participated in the inspection of the project or in preparation of the report and the independent

consultant(s) who directed those activities.

(g) *Statement of independence.* Each independent consultant responsible for the report must declare that all conclusions and recommendations in the report are made independently of the licensee, its employees, and its representatives.

(h) *Signature.* The report must be signed and sealed by each independent consultant responsible for the report.

(i) *Other information.* The report must provide other information listed in the Guidelines.

§ 12.37 Comprehensive assessment.

A comprehensive assessment must include:

(a) *Review of prior reports and analyses of record.* The independent consultant team must review and consider all relevant reports on the safety of the development made by or written under the direction of Federal or state agencies, submitted under Commission regulations, or made by other consultants.

(1) In addition to the requirements of § 12.35(a)(1), the independent consultant team must have a full understanding of the risk, as defined in the Guidelines, associated with the project works.

(2) The independent consultant team shall perform a detailed review of the as-built drawings; monitoring data; and the methods, assumptions, calculations, results, and conclusions of the analyses of record pertaining to:

(i) Geology and seismicity;

(ii) Hydrology and hydraulics;

(iii) Stability and structural integrity of project works; and

(iv) Any other analyses relevant to the safety, stability, and operation of project works.

(b) *Physical field inspection.* The independent consultant team must perform a physical field inspection that complies with § 12.35(b).

(c) *Review of surveillance and monitoring plan and data.* The independent consultant team must perform a review of surveillance and monitoring plan and data that complies with § 12.35(c).

(d) *Review of dam and public safety programs.* The independent consultant team must perform a review of dam and public safety programs that complies with § 12.35(d).

(e) *Supporting Technical Information Document.* The comprehensive assessment shall include a review of the Supporting Technical Information Document and evaluation of its conformance with the Guidelines.

(f) *Potential failure modes analysis.* The comprehensive assessment shall include a potential failure modes analysis, conducted in accordance with the Guidelines.

(g) *Risk analysis.* The comprehensive assessment shall include a risk analysis, conducted in accordance with the scope and procedures established in the Guidelines. The Regional Engineer may, for good cause shown, grant a waiver of the requirement to complete a risk analysis. Any petition for waiver under this paragraph must be filed in accordance with § 385.207 of this chapter.

§ 12.38 Report on a comprehensive assessment.

(a) *Format.* The comprehensive assessment report must include documentation of all the items listed § 12.37 and conform to the format prescribed by the Guidelines.

(b) *Specific evaluation.* In addition to the items listed in § 12.36(b)(1) through (5), the comprehensive assessment report must evaluate:

(1) The adequacy of spillways, including the effects of overtopping of nonoverflow structures, as described in § 12.39;

(2) The Structural adequacy and stability of structures under all credible loading conditions;

(3) The potential for internal erosion and/or piping of embankments, foundations, and abutments;

(4) The design and construction practices used during original construction and subsequent modifications, in comparison with the industry best practices in use at the time of the inspection under this subpart;

(5) The adequacy of the Supporting Technical Information Document and the attached electronic records; and

(6) The adequacy and findings of the potential failure mode analysis and risk analysis report(s).

(c) *Analyses of record.* The comprehensive assessment report must include the independent consultant team's evaluation of the assumptions, methods, calculations, results, and conclusions of the items listed in § 12.37(a)(2)(i) through (iv). The evaluation must:

(1) Address the accuracy, relevance, and consistency with the current state of the practice of dam engineering;

(2) Be accompanied by sufficient documentation of the independent consultant team's rationale, including, as needed, new calculations by the independent consultant team to verify that the assumptions, methods, calculations, results, and conclusions in the analyses of record are correct; and

(3) If the independent consultant team is unable to review the analyses of record for any of the items listed in § 12.37(a)(2)(i) through (iv); or if the independent consultant team disagrees with the assumptions, methods, calculations, results, or conclusions therein; the independent consultant shall recommend that the licensee complete new analyses to address the identified concerns.

(d) *Changes since the previous inspection.* The requirements of this section are the same as described in § 12.36(c).

(e) *Recommendations.* The requirements of this section are the same as described in § 12.36(d).

(f) *Dissenting views.* The requirements of this section are the same as described in § 12.36(e).

(g) *List of participants.* The requirements of this section are the same as described in § 12.36(f).

(h) *Statement of independence.* The requirements of this section are the same as described in § 12.36(g).

(i) *Signature.* The requirements of this section are the same as described in § 12.36(h).

(j) *Other information.* Provide other information listed in the Guidelines.

§ 12.39 Evaluation of spillway adequacy.

The adequacy of any spillway must be evaluated, as part of a comprehensive assessment or as otherwise requested by the Regional Engineer, by considering hazard potential which would result from failure of the project works during normal and flood flows.

(a) If structural failure would present a hazard to human life or cause significant property damage, the independent consultant must evaluate:

(1) The ability of project works to withstand the loading or overtopping which may occur during floods;

(2) The capacity of spillways to prevent the reservoir from rising to an elevation that would endanger the project works; and

(3) The potential for misoperation of; failure to operate; blockage of; or debilitating damage to a spillway and its appurtenances (including but not limited to structural, mechanical, and electrical components of gates, valves, chutes, and training walls); and the effect thereof on the maximum reservoir level and potential for surcharged loading or overtopping to occur during floods.

(b) Spillway adequacy shall be evaluated for the magnitude of flooding required by the Guidelines.

(c) If structural failure would not present a hazard to human life or cause significant property damage, spillway adequacy may be evaluated by means of a design flood of lesser magnitude than

the probable maximum flood provided that the most recent comprehensive assessment report required by § 12.38 provides a detailed explanation of and rationale for the finding that structural failure would not present a hazard to human life or cause significant property damage.

§ 12.40 Time for inspections and reports.

(a) For any project that was inspected under this subpart prior to January 1, 2021, under the Commission's rules in effect on January 1, 2020:

(1) A periodic inspection or comprehensive assessment must be completed, and the report on it filed, within five years of the due date of the Previous Part 12D Report.

(2) The Regional Engineer may require that the first report due to be filed under this subpart after January 1, 2021 be a report on a comprehensive assessment.

(3) The first comprehensive assessment under this subpart must be completed, and the report on it filed, by December 31, 2034.

(b) For any project that was not inspected under this subpart prior to January 1, 2021, under the Commission's rules in effect on January 1, 2020:

(1) For any development that meets the criteria specified in § 12.30(a)(1) or (2), and was constructed before the date of issuance of the order licensing that development, or amending a license to include that development, the first comprehensive assessment under this subpart must be completed, and the report on it filed, not later than two years after the date of issuance of the order licensing that development or amending the license to include that development.

(2) For any development that was constructed after the date of issuance of the order licensing that development, or amending a license to include that development, the first comprehensive assessment under this subpart must be completed, and the report on it filed, not later than five years after the date of issuance of the order licensing that development or amending the license to include that development.

(3) For any development not set forth in either paragraph (b)(1) or (2), the first comprehensive assessment under this subpart must be completed, and the report on it filed, by a date specified by the Regional Engineer. The filing date must not be more than two years after the date of notification that a comprehensive assessment and report under this subpart are required.

(c) Timing for subsequent reports filed under this subpart:

(1) A comprehensive assessment must be completed, and the report on it filed, within ten years of the date the previous comprehensive assessment report was due to be filed.

(2) A periodic inspection must be completed, and the report on it filed, within five years of the date the previous comprehensive assessment report was due to be filed.

(d) Extension of time: For good cause shown, the Regional Engineer may extend the time for filing the report on a comprehensive assessment or periodic inspection under this subpart.

(e) The Regional Engineer may require that any report due to be filed under this subpart be a report on a comprehensive assessment or a report on a periodic inspection, notwithstanding the type of review (periodic inspection or comprehensive assessment) scheduled to be performed under paragraphs (c)(1) and (2) of this section.

(f) Prior to performing a periodic inspection or comprehensive assessment, a preliminary report prepared by the independent consultant team must be filed with the Regional Engineer to document the initial findings, understanding, and preparation of the independent consultant team.

(1) For any periodic inspection, the preliminary report must be filed in advance of the physical field inspection, in accordance with the timing and procedures established in the Guidelines.

(2) For any comprehensive assessment, the preliminary report must be filed in advance of the physical field inspection, potential failure modes analysis, or risk analysis, whichever occurs first, in accordance with the timing and procedures established in the Guidelines.

(3) If the Regional Engineer determines that the preliminary report does not clearly demonstrate that the independent consultant team is adequately prepared for the inspection, the Regional Engineer may require the inspection to be postponed. Any such postponement shall not constitute good cause for an extension of time under paragraph (d) of this section.

§ 12.41 Corrective measures.

(a) *Corrective measures.* For items that are identified, during a periodic inspection or comprehensive assessment under this subpart, as requiring corrective action, the following conditions apply:

(1) *Corrective plan and schedule.* (i) Not later than 60 days after a report on a periodic inspection or comprehensive assessment is filed with the Regional Engineer, the licensee must submit to the Regional Engineer a plan and schedule addressing the recommendations of the independent consultant and for investigating, designing, and carrying out any corrective measures that the licensee proposes to implement.

(ii) The plan and schedule may include any proposal, including taking no action, that the licensee considers a preferable alternative to any corrective measure recommended in the report of the independent consultant. Any proposed alternative must be accompanied by the licensee's complete justification and detailed analysis and evaluation in support of that alternative.

(2) *Carrying out the plan.* The licensee must complete all corrective measures in accordance with the plan and schedule submitted to, and approved or modified by, the Regional Engineer, and on an annual basis must submit a status report on the corrective measures until all have been completed.

(3) *Extension of time.* For good cause shown, the Regional Engineer may extend the time for filing the plan and schedule required by this section.

(b) *Emergency corrective measures.* If, in the course of a periodic inspection or comprehensive assessment conducted under this subpart, an independent consultant discovers any condition for which emergency corrective measures are advisable, the independent consultant must immediately notify the licensee and the licensee must report that condition to the Regional Engineer pursuant to § 12.10(a) of this part. Emergency corrective measures must be included in the corrective plan and schedule required by paragraph (a)(1) of this section, and are also subject to paragraphs (a)(2) and (3) of this section.

Subpart E—Other Responsibilities of Applicant or Licensee

§§ 12.40 through 12.44 [Redesignated as §§ 12.50 through 12.54]

■ 10. Redesignate §§ 12.40 through 12.44 as §§ 12.50 through 12.54, respectively.

§§ 12.55 through 12.59 [Reserved]

■ 11. Add reserved § § 12.55 through 12.59.

■ 12. Revise newly redesignated § 12.52 to read as follows:

§ 12.52 Warning and safety devices.

(a) To the satisfaction of, and within a time specified by the Regional Engineer, an applicant or licensee must install, operate, and maintain any signs, lights, sirens, barriers, or other safety devices that may reasonably be necessary or desirable to warn the

public of fluctuations in flow from the project or otherwise to protect the public in the use of project lands and waters.

(b) The Regional Engineer may require the applicant or licensee to prepare, periodically update, and file with the Commission a public safety plan that formalizes the installation, operation, and maintenance of all necessary public safety devices. Public safety plans must be developed in accordance with the Guidelines for Public Safety at Hydropower Projects established, and from time to time revised, by the Director of the Division of Dam Safety and Inspections.

§ 12.54 [Amended]

■ 13. Amend newly redesignated § 12.54 as follows:

■ a. In paragraph (b)(2), remove ''the periodic'' and add in its place ''an'' and add ''gate'' directly following the second appearance of the word ''spillway''; and

■ b. In paragraph (c)(2), remove ''the periodic'' and add in its place ''an''.

■ 14. Add subpart F, consisting of §§ 12.60 through 12.65, to read as follows:

Subpart F—Owner's Dam Safety Program

Sec.

12.60 Applicability.
12.61 Definitions.
12.62 General requirements.
12.63 Contents of Owner's Dam Safety Program.
12.64 Annual review and update of Owner's Dam Safety Program.
12.65 Independent external audit and peer review.

§ 12.60 Applicability.

The licensee of any dam or other project feature classified as having a high or significant hazard potential, as defined in § 12.3(b)(14), is required to submit an Owner's Dam Safety Program to the Regional Engineer.

§ 12.61 Definitions.

For purposes of this subpart:

(a) *Chief Dam Safety Engineer* means the designated individual, who is a licensed engineer, who oversees the implementation of the Owner's Dam Safety Program and has primary responsibility for ensuring the safety of the licensee's dam(s) and other project features.

(b) *Chief Dam Safety Coordinator* means the designated individual, who is not required to be a licensed engineer, who oversees the implementation of the Owner's Dam Safety Program and has primary responsibility for ensuring the safety of the licensee's dam(s) and other project features.

§ 12.62 General requirements.

(a) The Owner's Dam Safety Program shall designate either a Chief Dam Safety Engineer or Chief Dam Safety Coordinator, as defined in § 12.61. Any Owner's Dam Safety Program that includes one or more dams or other project features classified as having a high hazard potential, as defined in § 12.3(b)(14), shall designate a Chief Dam Safety Engineer.

(b) The Owner's Dam Safety Program must be signed by the Owner and, as applicable, the Chief Dam Safety Engineer or the Chief Dam Safety Coordinator.

(c) The Owner's Dam Safety Program must be reviewed and updated on a periodic basis as described in § 12.64 and, if applicable, must undergo an independent external audit or peer review as described in § 12.65.

(d) The Owner may delegate to others, such as consultants, the work of establishing and executing the Owner's Dam Safety Program and role of Chief Dam Safety Engineer or Chief Dam Safety Coordinator, as applicable.

(1) If the role of Chief Dam Safety Engineer or Chief Dam Safety Coordinator is delegated to an outside party who does not oversee the day-to-day implementation of the Owner's Dam Safety Program, the Owner must designate an individual responsible for overseeing the day-to-day implementation.

(2) The Owner shall retain ultimate responsibility for the safety of the dams and other project features covered by the Owner's Dam Safety Program.

§ 12.63 Contents of Owner's Dam Safety Program.

The Owner's Dam Safety Program shall contain, at a minimum, the following sections:

(a) Dam safety policy, objectives, and expectations;

(b) Responsibilities for dam safety;

(c) Dam safety training program;

(d) Communication, coordination, reporting, and reports;

(e) Record keeping and databases;

(f) Continuous improvement; and

(g) Other information as further described by the Guidelines.

§ 12.64 Annual review and update of Owner's Dam Safety Program.

The Owner's Dam Safety Program, and the implementation thereof, shall be reviewed at least once annually by the licensee's dam safety staff and discussed with senior management of the Owner's organization. The licensee shall submit the results of the annual review, including findings, analysis, corrective measures, and/or revisions to the Owner's Dam Safety Program, to the Regional Engineer.

§ 12.65 Independent external audit and peer review.

(a) *Applicability.* For licensees of one or more dams or other project features classified as having a high hazard potential, as defined in in § 12.3(b)(14), an independent external audit or peer review of the Owner's Dam Safety Program, and the implementation thereof, shall be performed at an interval not to exceed five years.

(b) *Qualifications.* A statement of qualifications of the proposed auditor(s) or peer review team shall be submitted to the Regional Engineer for review, and written acceptance thereof must be obtained from the Regional Engineer prior to performing the audit or peer review.

(c) *Reporting.* (1) The auditor(s) or peer review team shall document their findings in a report.

(2) The report on the audit or peer review shall be reviewed by the Owner, Chief Dam Safety Engineer or Chief Dam Safety Coordinator, and management having responsibility in the area(s) audited or reviewed.

(3) The report on the audit or peer review shall be submitted to the Regional Engineer.

(d) *Additional guidance.* Additional guidance for performing external audits and peer reviews shall be provided in the Guidelines.

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FEDERAL REGISTER

Vol. 85 Friday,

No. 143 July 24, 2020

Part V

The President

Notice of July 23, 2020—Continuation of the National Emergency With Respect to Mali

Federal Register
Vol. 85, No. 143
Friday, July 24, 2020

Presidential Documents

Title 3—

The President

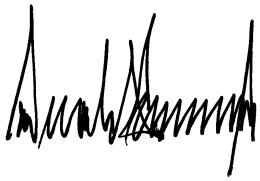
Notice of July 23, 2020

Continuation of the National Emergency With Respect to Mali

On July 26, 2019, by Executive Order 13882, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in Mali.

The situation in Mali, including repeated violations of ceasefire arrangements made pursuant to the 2015 Agreement on Peace and Reconciliation in Mali; the expansion of terrorist activities into southern and central Mali; the intensification of drug trafficking and trafficking in persons, human rights abuses, and hostage-taking; and the intensification of attacks against civilians, the Malian defense and security forces, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), and international security presences, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on July 26, 2019, must continue in effect beyond July 26, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13882 with respect to the situation in Mali.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 23, 2020.

[FR Doc. 2020–16312
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