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The President

Proclamation 10091 of October 1, 2020

National Manufacturing Day, 2020

By the President of the United States of America

A Proclamation

Since the founding of our Nation, Americans have been renowned for their craftsmanship and productivity. On National Manufacturing Day, we celebrate our dedicated American workers who carry on this legacy, recognizing that manufacturing is a cornerstone of our economic prosperity and national security. The workmanship and ingenuity of American manufacturers make ''Made in the U.S.A.'' an enduring stamp of patriotism and excellence, and we will always support the men and women whose work ensures that American manufacturing is second to none.

Since my first day in office, I have put America first, ushering in an unprecedented manufacturing revival. In 2017, I signed into law the Tax Cuts and Jobs Act, supercharging our economic resurgence after more than a decade of stagnation. My Administration also embarked on a long-overdue effort to eliminate unnecessary and burdensome regulations, unleashing the full potential of our manufacturers. Under my leadership, we also renegotiated one-sided and unfair trade deals, finally putting American workers and their interests first to ensure they can compete on a level playing field with their foreign counterparts.

These policies and achievements have delivered historic results for the American worker and American families. Prior to the coronavirus pandemic, our Nation had added more than 483,000 manufacturing jobs since my inauguration. In addition, more than 430 organizations have signed my Administration's Pledge to America's workers, committing to providing education and training opportunities for 16 million American students and workers over the next 5 years, with manufacturing workers as a primary beneficiary. Thanks to the renegotiated United States-Korea Free Trade Agreement, which I signed in September of 2018, American manufacturers are being treated more fairly on the global stage, and we ended a bilateral trade deficit of more than 170 percent caused by previous administrations' disastrous policies. In January of this year, I also delivered on my promise to replace the outdated North American Free Trade Agreement by signing into law the United States-Mexico-Canada Agreement, which will create nearly 600,000 new jobs—including 76,000 in the auto industry alone—and spur up to $235 billion in new economic activity for our country.

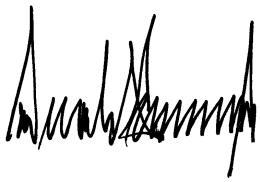
In recent months, the vital importance of our Nation's manufacturing sector to the strength, security, and resilience of our country has become abundantly clear. Since the arrival of the coronavirus from China, the health and safety of the American people has depended more than ever on American manufacturing for essential goods and medical supplies. To help facilitate the delivery of essential supplies and goods, I invoked the Defense Production Act and related authorities more than 100 times since March to launch the greatest manufacturing mobilization since the Second World War, quickly focusing the might of American industry toward defeating the virus. Our manufacturers have delivered when they were needed most, working with Federal, State, and local government partners to produce more than 240 million N95 respirators, one billion surgical masks, 45 million face shields, 430 million gowns, and 28 billion gloves—in addition to continuing to keep

grocery store shelves stocked and deliver other essential goods to the American people. The men and women who occupy manufacturing sector jobs have been and continue to be heroes in this effort, ensuring the strength of our supply chain and fueling our nationwide response to the virus.

As our Nation continues to reopen, we know that our manufacturing sector is vital to our economic recovery. Already, we are seeing signs that a historic resurgence is well underway; we added 29,000 manufacturing jobs in August alone, the same month in which manufacturing activity reached a 19-month high. American workers have pioneered the greatest advancements in history, and they will overcome this latest challenge as well and continue to transform lives around the world. Today, as we celebrate National Manufacturing Day and our Nation's exceptional manufacturing heritage, let us resolve to expand American excellence in manufacturing into the future, securing our national prosperity for generations to come.

NOW, THEREFORE, I, Donald J. Trump, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2, 2020, as National Manufacturing Day. I call upon all Americans to observe this day to celebrate today's manufacturing and the U.S. manufacturers that make our communities strong.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 302

RIN 3206–AN30

Employment in the Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing employment in the excepted service. The rules will clarify the existing policy on exemptions from excepted service selection procedures and provide additional procedures for passing over a preference eligible veteran. The intended effect of these changes is to align the regulations with binding case law and thus strengthen the application of veterans' entitlements in the excepted service.

DATES: The final rule is effective November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Katika Floyd by telephone at (202) 606–0960; by email at *employ@opm.gov;* by fax at (202) 606–2329; or by TTY at (202) 418–3134.

SUPPLEMENTARY INFORMATION: On November 30, 2016 the Office of Personnel Management (OPM) issued a proposed rule (81 FR 86290) to clarify the existing policy on exemptions from excepted service selection procedures and provide additional procedures for passing over a preference eligible veteran in accordance with binding case law.

During the 60-day comment period between November 30, 2016, and January 30, 2017, OPM received three sets of comments, of which two were from individuals and one was from a Federal Agency.

Two individuals provided comments that were beyond the scope of the proposed rule. As summarized below, OPM is not adopting these comments:

- One individual suggested that OPM develop a new excepted service Schedule for positions in Schedules A and B in which the procedures of 5 CFR part 302 are required; all excepted service positions not listed by OPM would presumptively be exempt from part 302's appointment procedures. OPM is not adopting this comment because the current regulatory structure, in which exemptions are specifically listed, is more in keeping with the general rules for excepted service hiring in 5 U.S.C. 3320.
- One individual suggested OPM include a cross-reference to 5 CFR part 302 procedures in the listing of Schedule A and B authorities required by 5 CFR part 213. Another individual suggested that the annual **Federal Register** notice of the consolidated listing of Schedules A, B, and C exceptions include information about whether the individual positions are exempt from 302 procedures. OPM is not adopting this comment. The notice requirements in 5 CFR 213.103 are unrelated to appointment procedures. The purpose of those requirements, promulgated pursuant to Civil Service Rule VI, 5 CFR 6.1, is to inform the public and agencies of OPM's decision granting the excepted appointing authority.
- One individual requested that OPM clarify the provisions for conversion to the competitive service of employees serving on Pathways appointments and Veterans Recruitment Appointments. OPM is not adopting this comment because the provisions for conversion in 5 CFR part 307 and part 362 are a separate matter, and, in any event, we believe that they are sufficiently clear.
- One individual suggested that OPM revise 5 CFR part 302 to include Alternative Rating and Selection Procedures (*i.e.,* category rating). We note that a change to this provision was not included in the proposed rule that OPM published in 2016. Moreover, it is not necessary for OPM to adopt this comment, because agencies already have the option, under § 302.105, of adopting category rating-like selection procedures, as long as those procedures provide preference eligibles with as much advantage in referral as they would otherwise receive under the methods specified in part 302. OPM will consider making this change in conjunction with a future package intended to address intervening statutory amendments.

Positions Exempt From Appointment Procedures

One individual suggested that for positions exempt from the appointment procedures in part 302, OPM clarify the phrase ''each agency must follow the principle of veteran preference as far as administratively feasible'' as used in § 302.101(c) or provide guidance in light of the Merit System Protection Board (MSPB) case, *Jarrard* v. *Social Security Administration,* 115 M.S.P.R. 397 (2010), *aff'd sub nom. Jarrard* v. *Department of Justice,* 669 F.3d 1320 (Fed. Cir. 2012). We see no need to amend the rule to explain the meaning of this phrase. This standard was discussed at length in *Patterson* v. *Department of the Interior,* 424 F.3d 1151 (Fed. Cir. 2005), a precedential decision in which the U.S. Court of Appeals for the Federal Circuit accepted the Government's argument that it was not possible to give attorney applicants veterans' preference points under 5 U.S.C. 3309 because an appropriations law prohibits the use of examination and rating in attorney hiring. In that litigation, OPM took the position that the phrase ''follow the principle of veteran preference as far as administratively feasible'' means that veterans' preference must be considered as a positive factor in the selection process. See *Patterson,* 424 F.3d at 1156–57. The Federal Circuit sustained OPM's position. Id. at 1159–1160 (''The positive factor test, in turn, strikes us as a reasonable way of 'follow[ing] the principle of veteran preference as far as administratively feasible,' 5 CFR 302.101(c), in the case of a preference eligible applying for an excepted service attorney position.''). This is the test OPM continues to regard as appropriate for positions exempted by § 302.101(c). We note that this definition had previously been used by the Department of Justice, in a 1979 opinion addressing what is required for attorney hiring. 3 U.S. Op. Off. Legal Counsel 140, 1979 WL 16553 (O.L.C.), at 146–147 (''The Department routinely applies the Veterans Preference Act in a meaningful fashion to attorney-hiring. . . . That an applicant is a preference eligible is weighed as a positive factor in the Department's attorney-hiring program, [footnote omitted] . . . . When the

veteran's other qualifications place him or her in close competition, the veteran is preferred over other applicants with substantially equal qualifications.''). We note one exception. As observed below, if OPM determines that part 302's appointment procedures apply to an agency-specific appointing authority under § 302.101(c)(6), OPM's approval of the appointing authority will address the procedures that apply.

One individual recommended that positions for readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees filled under 5 CFR 213.3102(ll) should be exempt from the procedures in 5 CFR 302. The commenter noted that employees in the reader and assistant positions are used to fill positions that support disabled employees who may have been appointed under 5 CFR 213.3102(u) (which is exempt from 302 procedures), so the reader and personal assistant positions should also be exempt. OPM is not adopting this recommendation. OPM has no basis or evidence which suggests that agencies cannot apply part 302 when filling positions under 5 CFR 213.3102(ll), or that part 302 would otherwise create significant barriers to filling these positions. We note that no agency has contacted OPM for an agency-specific exemption for positions filled under 5 CFR 213.3102(ll). A key distinction between the two hiring authorities is that under 5 CFR 213.3102(u) an applicant can demonstrate his or her ability to do the job during a trial period or temporary appointment. Such is not the case for positions filled using 5 CFR 213.3102(ll).

One individual, commenting on OPM's proposal to amend 5 CFR 302.101(c)(6), expressed concern that ''OPM with this change is in essence requiring 5 CFR 302 competition for positions for which it is impractical to examine.'' Section 302.101(c)(6) had stated that positions in schedule A of the excepted service were exempt from the appointment procedures in part 302 ''when OPM agrees with the agency that the positions should be included hereunder.'' OPM proposed amending this text to state that positions in schedule A of the excepted service are exempt from the appointment procedures in part 302 when ''OPM agrees with the agency that the positions should be included hereunder and states in writing that an agency is not required to fill positions according to the procedures in this part.'' As OPM explained in the accompanying **Federal Register** notice, this is a clarification, not a substantive change. See 81 FR 86290. The fact that ''it is not practicable to examine'' for a position, requiring its placement in schedule A of the excepted service, does not automatically make part 302 inapplicable; but rather, reflects the impracticability of applying ''the qualification standards and requirements established for the competitive service'' when hiring for the position. 5 CFR 213.3101. OPM's written approvals of schedule A appointing authorities specify whether any of the procedures in part 302 apply.

Applying Veterans Preference

One agency commented that Sole Survivorship Preference (as defined in 5 CFR part 211) needs to be addressed in §§ 302.201(b), 302.303(d), and 302.304(b)(5). OPM agrees and has updated these sections in the final rule accordingly.

This agency also asked OPM to clarify selections under § 302.401(a) when fewer than three candidates remain in the highest preference category. Section 302.401(c) states, in part, ''an agency must make its selection from the highest available preference category, as long as at least three candidates remain in that group. When fewer than three candidates remain in the highest category, consideration may be expanded to include the next category.'' In instances in which two preference categories are merged, an agency may select any preference eligible in the newly merged category. The order of selection is described elsewhere in the regulations. Because we believe the text of the rule is clear, we are not adopting the comment.

Technical Change Required by a Recently-Enacted Statute

The August 13, 2018 enactment of Public Law 115–232, the John S. McCain National Defense Authorization Act for FY 2019 (NDAA), requires a technical amendment. Sections 1107(b)(1)(B) and (d) of the NDAA provide that effective on the date when OPM issues a final rule to implement section 1107 of the NDAA, subsection (b)(7) of 5 U.S.C. 3319 will be redesignated as subsection (b)(6).

OPM has not yet issued a final rule to implement section 1107 of the NDAA, but when it does so, the reference to 5 U.S.C. 3319(c)(7) will become obsolete. To avoid the need for future technical and conforming amendments, this final rule replaces the specific reference to 5 U.S.C. 3319(c)(7) with a more general reference to 5 U.S.C. 3319(c).

Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated by OMB as a ''significant regulatory action'' but not an ''economically significant'' regulatory action as described under Section 3(f)(1) under Executive Order 12866.

Reducing Regulation and Controlling Regulatory Costs

This rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this rule imposes no more than de minimis costs.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies and employees.

Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and OPM will submit a rule report to each House of the Congress and to the Comptroller General

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

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This final regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 302

Government employees.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is amending 5 CFR part 302 as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3317, 3318, 3319, 3320, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

■ 2. Amend § 302.101 by revising paragraph (c)(6) and adding paragraph (c)(11) to read as follows:

§ 302.101 Positions covered by regulations.

* * * * *

(c) * * *

(6) Positions included in Schedule A (see subpart C of part 213 of this chapter) for which OPM agrees with the agency that the positions should be included hereunder and states in writing that an agency is not required to fill positions according to the procedures in this part.

* * * * *

(11) Appointment of persons with intellectual disabilities, severe physical disabilities, or psychiatric disabilities to positions filled under 5 CFR 213.3102(u).

■ 3. Amend § 302.201 by revising paragraph (b) to read as follows:

§ 302.201 Persons entitled to veteran preference.

* * * * *

(b) When eligible candidates are referred without ranking, the agency shall note preference as ''CP'' for preference eligibles under 5 U.S.C. 2108(3)(C), as ''XP'' for preference eligibles under 5 U.S.C. 2108(3)(D) through (G), as ''SSP'' for preference eligibles under 5 U.S.C. 2108(3)(H) and as ''TP'' for all other preference eligibles under that title.

■ 4. Amend § 302.303 by revising paragraph (d) to read as follows:

§ 302.303 Maintenance of employment lists.

* * * * *

(d) *Order of entry.* An agency shall enter the names of all applicants rated eligible under § 302.302 on the appropriate list (priority reemployment, reemployment, or regular employment) in the following order:

(1) *When candidates have been rated only for basic eligibility under § 302.302(a).* (i) Preference eligibles having a compensable, service-connected disability of 10 percent or more (designated as ''CP'') unless the list will be used to fill professional positions at the GS–9 level or above, or equivalent;

(ii) All other candidates eligible for 10-point veteran preference;

(iii) All candidates eligible for 5-point veteran preference;

(iv) All candidates eligible for sole survivorship preference and

(v) Qualified candidates not eligible for veteran preference.

(2) *When qualified candidates have been assigned numerical scores under § 302.302(b).* (i) Preference eligibles having a compensable, service-connected disability of 10 percent or more, in the order of their augmented ratings, unless the list will be used to fill professional positions at the GS–9 level or above, or equivalent;

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered first, followed, second, by 5-point preference eligibles, third, by sole survivorship preference eligibles, and last, by nonpreference eligibles.

■ 5. Amend § 302.304 by revising paragraph (b)(5) to read as follows:

§ 302.304 Order of consideration.

* * * * *

(b) * * *

(5) *Unranked order.* When numerical scores are not assigned, the agency may consider applicants who have received eligible ratings for positions not covered by paragraph (b)(4) of this section in either of the following orders:

(i) *By preference status.* Under this method, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, fourth by sole survivorship preference eligibles, and last, by nonpreference eligibles. Within each category, applicants from the reemployment list will be placed ahead of applicants from the regular employment list.

(ii) *By reemployment/regular list status.* Under this method, all applicants on the reemployment list are considered before applicants on the regular employment list. On each list, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, fourth by sole survivorship preference eligibles, and last by nonpreference eligibles.

■ 6. Amend § 302.401 by revising paragraph (b) to read as follows:

§ 302.401 Selection and appointment.

* * * * *

(b) *Passing over a preference applicant.* When an agency, in making an appointment as provided in paragraph (a) of this section, passes over the name of a preference eligible, it shall follow the procedures in 5 U.S.C. 3318(c) and 3319(c) as described in the *Delegated Examining Operations Handbook.* An agency may discontinue consideration of the name of a preference eligible for a position as described in 5 U.S.C. 3318(c).

* * * * *

[FR Doc. 2020–19498 Filed 10–6–20; 8:45 am]

BILLING CODE 6325–39–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

RIN 3245–AH01

Regulatory Reform Initiative: Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: With this deregulatory action, the U.S. Small Business Administration (SBA) is revising regulations regarding rules of procedure governing cases before the Office of Hearings and Appeals (OHA) to remove an unnecessary regulatory provision and to clarify an existing rule of procedure.

DATES: This rule is effective November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Delorice Price Ford, Assistant Administrator, Office of Hearings and Appeals, (202) 401–8200 or *delorice.ford@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Part 134, Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

SBA is removing § 134.317 from its regulations because the procedure addressed in this regulation, the return of size appeal case files, is no longer necessary. Case files are now transmitted electronically to OHA from SBA's Area Offices, which eliminates the need to return paper records by mail. SBA is also revising § 134.714 to clarify that the decision of a Judge regarding a status protest appeal from a Women-Owned Small Business (WOSB) or Economically Disadvantaged Women-Owned Small Business (EDWOSB) is SBA's final agency decision and becomes effective upon issuance. SBA received one comment regarding reducing the amount of words in its regulations, which we have done in this regulation by removing one section of the OHA's regulations. SBA will consider this comment when drafting future OHA rulemakings.

II. Section by Section Analysis

A. § 134.317 Return of the Case File

SBA is removing § 134.317 of its regulations, which currently states that upon issuance of a decision, OHA will return the case file to the transmitting Area Office. When a size appeal is filed, SBA's Area Office will often mail the original paper protest file to OHA for review. Pursuant to § 134.317, OHA will then send the original file back to the Area Office at the conclusion of the appeal process. For several years, however, OHA has transitioned many of its processes to electronic transmission and storage. OHA will now transition this part of the size appeal process to a completely electronic method. Therefore, neither the Area Offices nor OHA will need to mail the paper protest file back and forth. As such, this regulation is no longer necessary.

B. § 134.714 When must the Judge issue his or her decision?

SBA is adding language to § 134.714 of its regulations to clarify that decisions issued by OHA pursuant to WOSB or EDWOSB status protest appeals are considered final agency decisions. Currently, the rule is silent on the issue, which could lead to confusion since other size and status appeal regulations in part 134 clearly state that the OHA decision is a final agency decision. *See* § 134.316(d) (size appeals), § 134.409(a) (8(a) appeals), and § 134.515(a) (Service-Disabled Veteran-Owned Small Business Concern status protest appeals). SBA does not follow a different process for women-owned businesses. For example, OHA's WOSB/EDWOSB appeal decisions currently state that the decision is the final agency decision. As such, SBA believes that the proposed revision for § 134.714 will clarify that the Judge's decision in a WOSB or EDWOSB status protest appeal is the final agency decision and that the decision becomes effective upon issuance.

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

A. Executive Order 12866

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

B. Executive Order 13771

This rule is expected to be an Executive order deregulatory action with an annualized net savings of $28,733 and a net present value of $410,478, both in 2016 dollars.

This rule removes § 134.317, Return of the case file, because it is no longer necessary. Case files will now be transmitted electronically to OHA from the Area Office, eliminating the need to return paper records by mail. This rule will eliminate significant costs related to packing, labeling, and shipping case files from the transmitting Area Office and returning those files by mail. OHA receives and returns approximately 120 case files per fiscal year to the Area Offices, for a total of 240 shipments. Assuming it takes 45 minutes to prepare the shipment, printing, and mailing the files and that a GS–13 analyst performs this work at a wage of $112,393 plus 30 percent for benefits, or $146,111 ($73 hourly), this would save the government $13,140, annually. The cost of each shipment is approximately $70, which would save the government an additional $16,800 for a total savings of $29,940 per year, in current dollars.

C. Executive Order 12988

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

D. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. 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, as specified in the Executive order. As such, it does not warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. If not, the RFA permits agencies to certify to that effect. SBA believes that the removal of § 134.317 will only impact itself and that it will save SBA the costs associated with mailing paper files back and forth during the appeal process. SBA therefore certifies that this rule has ''no significant impact upon a substantial number of small entities'' within the meaning of the RFA.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Claims, Equal employment opportunity, Lawyers, Organizations and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR part 134 as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657t and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 38 U.S.C. 8127(f)(8)(B).

Subpart K issued under 38 U.S.C. 8127(f)(8)(A).

Subpart L issued under 15 U.S.C. 636(a)(36); Pub. L. 116–136; Pub. L. 116–139; 116–142; 116–147.

§ 134.317 [Removed and reserved]

■ 2. Remove and reserve § 134.317.

■ 3. Amend § 134.714 by adding a sentence to the end of the section to read as follows:

§ 134.714 When must the Judge issue his or her decision?

* * * The Judge's decision is the final agency decision and becomes effective upon issuance.

Jovita Carranza,

Administrator.

[FR Doc. 2020–19567 Filed 10–6–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0557; Project Identifier AD–2020–00541–E; Amendment 39–21269; AD 2020–20–13]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–15–04 for certain General Electric Company (GE) CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F model turbofan engines. AD 2018–15–04 required ultrasonic inspection (UI) of high-pressure turbine (HPT) stage 1 and stage 2 disks. This AD retains the required inspections while expanding the population of affected HPT disks. This AD was prompted by an uncontained failure of an HPT stage 2 disk and the manufacturer's determination to expand the population of affected HPT disks. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 12, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 12, 2020.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.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. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0557.

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–2020–0557; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Scott Stevenson, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7132; fax: 781–238–7199; email: *Scott.M.Stevenson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2018–15–04, Amendment 39–19336 (83 FR 43739, August 28, 2018) (''AD 2018–15–04''). AD 2018–15–04 applied to certain GE CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F model turbofan engines. The NPRM published in the **Federal Register** on June 8, 2020 (85 FR 35024). The NPRM was prompted by an uncontained failure of an HPT stage 2 disk and the manufacturer's determination to expand the population of affected HPT disks. The NPRM proposed to retain the required inspections of AD 2018–15–04, while expanding the population of affected HPT disks. The FAA is issuing this AD to address the unsafe condition on these products.

Comments

The FAA gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Update the No-Reporting Requirements

Delta Air Lines (DAL) requested that the FAA update paragraph (h) of this AD to include a no-reporting requirement with respect to Accomplishment Instructions, paragraph 3.A.(3), of GE CF6–80A Service Bulletin (SB) 72–0869 R02, dated May 29, 2019 (''GE SB 72–0869 R02''). DAL reasoned that paragraph (h) of the NPRM contains a no-reporting requirement for the Accomplishment Instructions, paragraphs 3.A.(2)(c) and 3.A.(2)(f), of GE CF6–80C2 SB 72–1562 R04, dated May 29, 2019 (''GE SB 72–1562 R04''); but fails to include a no-reporting requirement associated with the Accomplishment Instructions, paragraph 3.A.(3), of GE SB 72–0869 R02.

The FAA disagrees. Paragraph (g)(1) of this AD requires a UI of the HPT stage 1 and 2 disks on affected CF6–80C2 model turbofan engines using the Accomplishment Instructions, paragraph 3.A.(2), of GE SB 72–1562 R04. Within paragraph 3.A.(2) of GE SB 72–1562 R04 are instructions that include reporting certain information to GE. Therefore, the FAA found it necessary to indicate in this AD that these reporting instructions are not required. Paragraph (g)(2) of this AD requires the use of paragraph 3.A.(2) of GE SB 72–0869 R02, which does not include reporting instructions to perform the UI. This AD does not require the use of paragraph 3.A.(3) of GE SB 72–0869 R02 and, as such, the addition of a no-reporting requirement for that paragraph is unnecessary.

Support for the AD

The Boeing Company, FedEx Express, United Airlines Engineering, and the Air Line Pilots Association, International, expressed support for the AD.

Conclusion

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

• Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE CF6–80C2 SB 72–1562 R04, dated May 29, 2019. The SB describes procedures for UI of CF6–80C2 turbofan engine HPT stage 1 and 2 disks. The FAA also reviewed GE CF6–80A SB 72–0869 R02, dated May 29, 2019. The SB describes procedures for UI of CF6–80A turbofan engine HPT stage 2 disks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,512 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
UI of HPT disk	10 work-hours × $85 per hour = $850	$0	$850	$1,285,200

The FAA estimates the following costs to do any necessary replacements that are required based on the results of the 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 CF6–80C2 HPT stage 1 disk	0.25 work-hours × $85 per hour = $21.25	$799,700	$799,721.25
Replace CF6–80C2 HPT stage 2 disk	0.25 work-hours × $85 per hour = $21.25	364,600	364,621.25
Replace CF6–80A HPT stage 2 disk	0.25 work-hours × $85 per hour = $21.25	344,000	344,021.25

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 has 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 above, I certify that this AD:

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

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

(3) Would 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 Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2018–15–04, Amendment 39–19336 (83 FR 43739, August 28, 2018); and

■ b. Adding the following new AD:

2020–20–13 General Electric Company: Amendment 39–21269; Docket No. FAA–2020–0557; Project Identifier AD–2020–00541–E.

(a) Effective Date

This AD is effective November 12, 2020.

(b) Affected ADs

This AD replaces AD 2018–15–04, Amendment 39–19336 (83 FR 43739, August 28, 2018).

(c) Applicability

This AD applies to General Electric Company (GE) CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F model turbofan engines with high-pressure turbine (HPT) disks with serial numbers listed in Tables 1 and 2 of Appendix A in GE CF6–80C2 Service Bulletin (SB) 72–1562 R04, dated May 29, 2019; and Table 1 of Appendix A in GE CF6–80A SB 72–0869 R02, dated May 29, 2019.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an uncontained failure of an HPT stage 2 disk and the manufacturer's determination to expand the population of affected HPT disks. The FAA is issuing this AD to prevent failure of the HPT stage 1 disk (CF6–80C2 engines) and the HPT stage 2 disk (CF6–80C2 and CF6–80A

engines). The unsafe condition, if not addressed, could result in an uncontained HPT disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) After the effective date of this AD, perform an ultrasonic inspection (UI) for cracks in HPT stage 1 and stage 2 disks on the CF6–80C2 turbofan engine at each piece-part exposure using the Accomplishment Instructions, paragraph 3.A.(2), of GE CF6–80C2 SB 72–1562 R04, dated May 29, 2019.

(2) After the effective date of this AD, perform a UI for cracks in HPT stage 2 disks on the CF6–80A turbofan engine at each piece-part exposure using the Accomplishment Instructions, paragraph 3.A.(2), of GE CF6–80A SB 72–0869 R02, dated May 29, 2019.

(3) If any disk fails the inspection required by paragraphs (g)(1) and (2) of this AD, replace the disk before further flight.

(h) No Reporting Requirements

The reporting requirements specified in the Accomplishment Instructions, paragraphs 3.A.(2)(c) and 3.A.(2)(f), of GE CF6–80C2 SB 72–1562 R04, dated May 29, 2019, are not required by this AD.

(i) Definition

For the purpose of this AD, ''piece-part exposure'' of the HPT stage 1 or stage 2 disk is the separation of that HPT disk from its mating rotor parts within the HPT rotor module (thermal shield and HPT stage 1 and stage 2 disk, respectively).

(j) 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 (k) 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.

(k) Related Information

For more information about this AD, contact Scott Stevenson, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7132; fax: 781–238–7199; email: *Scott.M.Stevenson@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) General Electric Company (GE) CF6–80C2 Service Bulletin (SB) 72–1562 R04, dated May 29, 2019.

(ii) GE CF6–80A SB 72–0869 R02, dated May 29, 2019.

(3) For GE service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued on September 24, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22038 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0049; Product Identifier 2017–CE–031–AD; Amendment 39–21222; AD 2020–18–01]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Textron Aviation Inc. (Textron) Model 172N, 172P, 172Q, 172RG, F172N, F172P, FR172K, R172K, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, T182, F182P, F182Q, FR182, R182, TR182, 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, 207, 207A, T207, T207A, 210–5 (205), 210–5A (205A), 210B, 210C, 210D, 210E, 210F, and T210F airplanes. This AD was prompted by cracks found in the lower area of the forward cabin doorpost bulkhead. This AD requires repetitively inspecting the lower area of the forward cabin doorposts at the strut attach fitting for cracks and repairing any cracks. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 12, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 12, 2020.

ADDRESSES: For service information identified in this final rule, contact Textron Aviation Inc., Textron Aviation Customer Service, One Cessna Blvd., Wichita, Kansas 67215; telephone: (316) 517–5800; email: *customercare@txtav.com;* internet: *https://support.cessna.com.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0049.

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–2018–0049; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bobbie Kroetch, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107; email: *bobbie.kroetch@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Textron Aviation Inc. (Textron) (type certificate previously held by Cessna Aircraft Company) Model 172N, 172P, 172Q, 172RG, F172N, F172P, FR172K, R172K, 182E,

182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, T182, F182P, F182Q, FR182, R182, TR182, 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, 207, 207A, T207, T207A, 210–5 (205), 210–5A (205A), 210B, 210C, 210D, 210E, 210F, and T210F airplanes. The SNPRM published in the **Federal Register** on May 29, 2020 (85 FR 32308).

The FAA preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on February 1, 2018 (83 FR 4605). The NPRM was prompted by reports of cracks in the lower area of the forward cabin doorpost bulkhead on more than four dozen Textron 100 and 200 airplanes. The NPRM proposed to require repetitively inspecting the lower area of the forward cabin doorposts at the strut attach fitting for cracks and repairing any cracks found by modifying the area with the applicable service kit. The SNPRM proposed to modify the estimated costs of the proposed AD, the repetitive inspection intervals, and the credit allowed for previous actions; clarify the inspection instructions for airplanes with the service kit installed; correct the contact information for obtaining the service information; and add a reporting requirement to collect the inspection results. The SNPRM also changed some of the model designations listed in the applicability in order to match the models as they are listed in the type certificate data sheet.

The FAA is issuing this AD to detect and address cracking of the wing strut attach point. The unsafe condition, if not addressed, could result in failure of the wing in operation, which could result in loss of control of the airplane.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the SNPRM and the FAA's response to each comment.

Support for the SNPRM

Patrick Imperatrice expressed support for the proposed AD.

Request To Extend or Remove Calendar Compliance Time

Kermit Bunde expressed support for the 1,000-hour time-in-service (TIS) inspection interval but requested the FAA remove the 36-month calendar time inspection interval. The commenter stated that the 36-month interval is too often and that cracking is a function of usage and not only elapsed time. The commenter provided examples of Cessna maintenance actions that have no calendar time limit.

The FAA disagrees. Both the manufacturer's guidance, which is published in the supplemental inspection documents (SIDs) for certain airplanes, and fleet history support the 36-month interval for inspecting this location. Loading conditions outside of flight, such as ground loads, handling loads, and tie down loads, may also cause cracking at this location. Therefore, the FAA determined the inspection interval of 36 calendar months or 1,000 hours TIS, whichever occurs first, is necessary to address the unsafe condition. The FAA did not change this AD based on this comment.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Cessna Single Engine Service Bulletin SEB93–5, Revision 2, dated May 29, 2019 (SEB93–5R2) and Cessna Single Engine Service Bulletin SEB95–19, dated December 29, 1995 (SEB95–19). For the applicable model airplanes, the service information contains procedures for repetitively inspecting the lower area of the forward cabin doorposts for cracks and repairing any cracks found by modifying the area with the applicable Cessna service kit.

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.

Other Related Service Information

The FAA reviewed Cessna Single Engine Service Kit SK172–147, dated December 29, 1995. This service kit provides instructions to add a channel to each forward cabin doorpost bulkhead. The FAA also reviewed Cessna Single Engine Service Kit SK182–115, dated December 29, 1995; Cessna Single Engine Service Kit SK206–42D, dated May 29, 2019; and Cessna Single Engine Service Kit SK210–156, dated December 29, 1995. For the applicable model airplanes, these service kits provide instructions to add a doubler and a channel to each forward cabin doorpost bulkhead. In addition, the FAA reviewed Cessna Single Engine Service Kit SK207–19A, dated May 29, 2019. The service information contains procedures to reinforce the lower forward doorpost bulkhead and wing strut fitting by adding a doubler and a channel to each forward cabin doorpost bulkhead.

Costs of Compliance

The FAA estimates that this AD affects 14,653 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the lower area of the forward cabin doorposts for cracks.	1.5 work-hours × $85 per hour = $127.50.	Not applicable	$127.50	$1,868,257.50
Reporting requirement	1 work-hour × $85 per hour = $85	Not applicable	85	1,245,505

The FAA estimates the following costs to do any necessary repairs that would be required based on the results of the inspection. Reference the applicable Cessna single engine service bulletin for kit applicability. The FAA has no way of determining the number of airplanes that might need this repair.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Install Cessna Single-Engine Service Kit SK172–147	36 work-hours × $85 per hour = $3,060	$3,415	$6,475
Install Cessna Single-Engine Service Kit SK182–115	36 work-hours × $85 per hour = $3,060	7,490	10,550
Install Cessna Single-Engine Service Kit SK206–42D	36 work-hours × $85 per hour = $3,060	3,115	6,175
Install Cessna Single-Engine Service Kit SK207–19A	36 work-hours × $85 per hour = $3,060	4,957	8,017
Install Cessna Single-Engine Service Kit SK210–156	36 work-hours × $85 per hour = $3,060	7,020	10,080

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–18–01 Textron Aviation Inc.: Amendment 39–21222; Docket No. FAA 2018–0049; Product Identifier 2017–CE–031–AD.

(a) Effective Date

This AD is effective November 12, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) model airplanes, certificated in any category:

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Table 1 to paragraph (c) of this AD – Affected Models and Serial Numbers

Model	Serial Numbers
172N	17272885 through 17274009 inclusive
172P	All serial numbers
172Q	17275869, 17275927 through 17275934 inclusive, 17275952, 17275959, 17275960, 17275962, 17275964, 17275965, 17275967, 17275968, 17275969, 17275971, 17275992, 17275999, 17276002, 17276005, 17276029, 17276032, 17276042, 17276045, 17276051, 17276052, 17276054, 17276101, 17276109, 17276140, 17276147, 17276188, and 17276211
172RG	All serial numbers
F172N	F17201910 through F17202039 inclusive
F172P	All serial numbers
FR172K	FR17200656 through FR17200675 inclusive
R172K	R1723200 through R1723454 inclusive
182E	All serial numbers
182F	All serial numbers
182G	All serial numbers
182H	All serial numbers
182J	All serial numbers
182K	All serial numbers
182L	All serial numbers
182M	All serial numbers
182N	All serial numbers
182P	All serial numbers
182Q	All serial numbers
182R	All serial numbers
T182	All serial numbers
F182P	All serial numbers
F182Q	All serial numbers
FR182	All serial numbers
R182	R18200002 through R18200583 inclusive
R182 and TR182	R18200001 and R18200584 through R18202039 inclusive
206	All serial numbers
P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, and TP206E	All serial numbers

Model	Serial Numbers
U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, and TU206G	All serial numbers
207, 207A, T207, and T207A	All serial numbers
210-5 (205)	All serial numbers
210-5A (205A)	All serial numbers
210B	All serial numbers
210C	All serial numbers
210D	All serial numbers
210E	All serial numbers
210F	All serial numbers
T210F	All serial numbers

BILLING CODE 4910–13–C

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracks found in the lower area of the forward cabin doorpost bulkhead. The FAA is issuing this AD to detect and address cracking of the wing strut attach point. The unsafe condition, if not addressed, could result in failure of the wing in operation, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Initial Inspections

(1) For airplanes without a lower forward doorpost bulkhead and wing strut fitting reinforcement service kit (service kit) installed in accordance with Cessna Single Engine Service Bulletin SEB95–19, dated December 29, 1995 (SEB95–19), or Cessna Single Engine Service Bulletin SEB93–5, Revision 2, dated May 29, 2019 (SEB93–5R2): At the applicable compliance time specified in paragraph (g)(1)(i) or (ii) of this AD, do a visual inspection of the lower forward doorpost at the strut attach fitting for cracks in accordance with steps 1.A., 1.B., 1.C., and 1.B. (the step following step 1.C.) of the Accomplishment Instructions in SEB95–19; or steps 1.A. and 1.B. of the Accomplishment Instructions in SEB93–5R2; as applicable to your model airplane.

(i) For airplanes that have accumulated less than 4,000 hours time-in-service (TIS) as of the effective date of this AD: Initially inspect prior to the accumulation of 4,000 hours TIS or within the next 200 hours TIS after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 4,000 or more hours TIS as of the effective date of this AD: Initially inspect within 200 hours TIS after the effective date of this AD or within 12 calendar months after the effective date of this AD, whichever occurs first.

(2) For airplanes with a service kit installed in accordance with SEB95–19 or SEB93–5R2: At the later of the times specified in paragraphs (g)(2)(i) and (ii) of this AD, do a visual inspection of the lower forward doorpost at the strut attach fitting for cracks in accordance with steps 1.A., 1.B., 1.C., and 1.B. (the step following step 1.C.) of the Accomplishment Instructions in SEB95–19; or steps 1.A. and 1.B. of the Accomplishment Instructions in SEB93–5R2; as applicable to your model airplane. Do not remove the installed service kit; instead, inspect for cracking that extends beyond the modified parts.

(i) At the applicable time specified in paragraph (g)(1)(i) or (ii) of this AD.

(ii) Within 1,000 hours TIS or 36 calendar months, whichever occurs first, since installing the service kit.

(h) Repetitive Inspections

(1) If no cracks are found during the initial inspection required by paragraph (g)(1) or (2) of this AD, thereafter repeat the inspection at intervals not to exceed 36 calendar months or 1,000 hours TIS, whichever occurs first from the last inspection, as long as no cracks are found.

(2) If cracks are found during any inspection required by paragraph (g)(1) or (h)(1) of this AD, do the inspection specified in paragraph (g)(2) of this AD within 36 calendar months or 1,000 hours TIS, whichever occurs first after installing the service kit required by paragraph (i)(1) of this AD. Thereafter, repeat the inspection at intervals not to exceed 36 calendar months or 1,000 hours TIS, whichever occurs first from the last inspection, as long as no additional cracks are found.

(i) Corrective Actions

(1) If cracks are found during any inspection required by paragraph (g)(1) or paragraph (h)(1) of this AD, before further flight, install a service kit in accordance with step 1.D. of the Accomplishment Instructions in SEB95–19; or step 1.C. of the Accomplishment Instructions in SEB93–5R2; as applicable to your model airplane.

(2) If cracks are found during any inspection required by paragraph (g)(2) or (h)(2) of this AD, before further flight, repair the area using a method approved by the Manager, Wichita ACO Branch, FAA. For a repair method to be approved by the Manager, Wichita ACO Branch as required by this paragraph, the Manager's approval letter must specifically refer to this AD. You may use the contact information in paragraph (n)(1) of this AD to obtain FAA approval of your repair method.

(j) Reporting Requirement

Within 30 days after the effective date of this AD, or within 30 days after completing the initial inspection required by paragraph (g) of this AD, whichever occurs later, report the findings of the initial inspection (regardless if cracks were found or not) to the FAA at *Wichita-COS@faa.gov.* Thereafter, within 30 days after completing each repetitive inspection required by paragraph (h) of this AD, if any crack was found, report the crack findings to the FAA at *Wichita-COS@faa.gov.* Include in your reports the following information:

(1) Name and address of the owner;

(2) Date of the inspection;

(3) Name, address, telephone number, and email address of the person submitting the report;

(4) Airplane serial number and total hours TIS on the airplane at the time of the inspection; and

(5) If any crack was found during the inspection, provide detailed crack information as specified below:

(i) A sketch or picture detailing the crack location;

(ii) Measured length of the crack(s) found;

(iii) Installation of a Cessna service kit or any other kit or repair before the inspection; and

(iv) Installation of any supplemental type certificates (STCs), alterations, repairs, or field approvals affecting the area of concern or affecting gross weight.

(k) Credit for Previous Actions

(1) You may take credit for the initial inspection required by paragraph (g) of this AD if you performed the inspection before the effective date of this AD using Cessna Single Engine Service Bulletin SEB93–5, dated March 26, 1993; or Cessna Single Engine Service Bulletin SEB93–5, Revision 1, dated September 8, 1995.

(2) You may take credit for the installation required by paragraph (i)(1) of this AD as follows.

(i) For Model 207, T207, 207A, and T207A airplanes with a service kit installed using SK206–42, SK206–42A, SK206–42B, or SK206–42C: You may take credit for the installation if done before the effective date of this AD using Cessna Single Engine Service Bulletin SEB93–5, dated March 26, 1993, or Cessna Single Engine Service Bulletin SEB93–5, Revision 1, dated September 8, 1995; if the reinforcement of the lower forward doorpost bulkhead and wing strut fitting specified in Cessna Single Engine Service Kit SK207–19A, dated May 29, 2019, is also accomplished within 200 hours TIS after the effective date of this AD.

(ii) *For all other models:* You may take credit for the installation if done before the effective date of this AD using Cessna Single Engine Service Bulletin SEB93–5, dated March 26, 1993; or Cessna Single Engine Service Bulletin SEB93–5, Revision 1, dated September 8, 1995.

(l) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not 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 Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (n)(1) of this AD.

(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.

(n) Related Information

(1) For more information about this AD, contact Bobbie Kroetch, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107; email: *bobbie.kroetch@faa.gov* or *Wichita-COS@faa.gov.*

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

(o) Material Incorporated by Reference

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

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

(i) Cessna Single Engine Service Bulletin SEB93–5, Revision 2, dated May 29, 2019.

(ii) Cessna Single Engine Service Bulletin SEB95–19, dated December 29, 1995.

(3) For service information identified in this AD, contact Textron Aviation Inc., Textron Aviation Customer Service, One Cessna Blvd., Wichita, Kansas 67215; telephone: (316) 517–5800; email: *customercare@txtav.com;* internet: *https://support.cessna.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued on August 24, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22039 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[Docket No. OAG 169; AG Order No. 4803–2020]

RIN 1105–AB61

Processes and Procedures for Issuance and Use of Guidance Documents

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule sets forth the Department's processes and procedures governing the review, clearance, and issuance of guidance documents and codifies existing Department limitations on the use of Department guidance documents in criminal and civil enforcement actions brought by the Department.

DATES:

Effective date: This rule is effective October 7, 2020.

Comments: Comments are due on or before November 6, 2020.

ADDRESSES: To ensure proper handling of comments, please reference Docket No. OAG 169 on all electronic and written correspondence. The Department encourages the electronic submission of all comments through *https://www.regulations.gov* using the electronic comment form provided on that site. For ease of reference, an electronic copy of this document is also available at that website. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to *https://www.regulations.gov* will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530. Comments received by mail will be considered timely if they are postmarked on or before November 6,

2020. The electronic Federal eRulemaking portal will accept comments until Midnight Eastern Time at the end of that day.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *https://www.regulations.gov.* Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to post that comment only partially) on *https://www.regulations.gov.* Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

If you want to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Discussion

The Department is committed to ensuring the fair and impartial administration of justice. This principle extends to the Department's issuance and use of guidance documents. Pursuant to 5 U.S.C. 301 and Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents,'' 84 FR 55235, the Department issues this rule to codify processes and procedures for the issuance and use of guidance documents that will enhance the fair and impartial administration of justice.

The Department recently codified in its regulations the Memorandum for All Components, ''Prohibition on Improper Guidance Documents,'' issued by then-Attorney General Jefferson B. Sessions III, which set certain limitations on the issuance of guidance documents. Att'y Gen. Order No. 4769–2020 (July 24, 2020). This rule builds on that regulation, providing specific processes and procedures governing the review, clearance, and issuance of guidance documents, along with procedures to petition for the withdrawal or modification of a guidance document consistent with Executive Order 13891. This rule also incorporates into the Code of Federal Regulations existing Department policy limitations on the use of guidance documents in criminal and civil enforcement actions brought by the Department.

A. Attorney General Sessions's Memorandum of November 16, 2017

As mentioned earlier in this preamble, the Department recently codified the Memorandum for All Components, ''Prohibition on Improper Guidance Documents,'' issued by then-Attorney General Jefferson B. Sessions III on November 16, 2017. That regulation set forth general definitions, principles, and compliance procedures required when the Department, including any of its components, issues a guidance document. This rule elaborates on those definitions, principles, and compliance procedures in light of Executive Order 13891.

B. Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents''

On October 9, 2019, President Donald J. Trump issued Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' Pursuant to that Executive Order, Executive departments and agencies are required to ''finalize regulations, or amend existing regulations as necessary, to set forth processes and procedures for issuing guidance documents.'' 84 FR at 55237. This rule incorporates requirements outlined in the Executive Order that were not otherwise provided for in the Department's existing processes and procedures for issuing guidance documents.

C. Limitations on the Use of Guidance Documents in Litigation

In addition to the enhancements described above, this rule codifies existing Department policies limiting the use of guidance documents in criminal and civil enforcement actions initiated by the Department. These existing policies are designed to ensure that enforcement actions satisfy principles of accountability and fair notice. Codification of these policies in the Code of Federal Regulations will further enhance transparency.

III. Regulatory Certifications

A. Administrative Procedure Act

This rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, or practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2), (b)(A), (d). However, the Department is, in its discretion, seeking public comment on this rulemaking.

B. Regulatory Flexibility Act

A Regulatory Flexibility Analysis was not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. *See* 5 U.S.C. 601(2), 604(a).

C. Executive Orders 12866, 13563, and 13771—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation.

This final rule is ''limited to agency organization, management, or personnel matters'' and thus is not a ''rule'' for purposes of review by the Office of Management and Budget (OMB), a determination in which OMB has concurred. *See* Executive Order 12866, sec. 3(d)(3). Accordingly this rule has not been formally reviewed by OMB.

This rule is not subject to the requirements of Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' because it is a regulation ''related to agency

organization, management, or personnel.'' Sec. 4(b).

D. Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform.''

E. Executive Order 13132—Federalism

This rule 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. Therefore, in accordance with Executive Order 13132, ''Federalism,'' the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. 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 $100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

G. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act, 5 U.S.C. 804. This action pertains to agency management or personnel, and agency organization, procedure, or practice, and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' as that term is used in the Congressional Review Act, 5 U.S.C. 804(3)(B), (C), and the reporting requirement of 5 U.S.C. 801 does not apply.

H. Paperwork Reduction Act of 1995

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 28 CFR part 50

Administrative practice and procedure.

Accordingly, for the reasons set forth in the preamble, part 50 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 50—STATEMENTS OF POLICY

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1162; 28 U.S.C. 509, 510, 516, and 519; 42 U.S.C.1921 *et seq.,* 1973c; and Pub. L. 107–273, 116 Stat. 1758, 1824.

■ 2. Add § 50.27 to read as follows:

§ 50.27 Processes and procedures for issuance and use of guidance documents.

(a) *Definitions*—(1) *Guidance document* has the same meaning described in § 50.26 of this part. A guidance document does not impose new standards of conduct on persons outside the Executive Branch, except as expressly authorized by statute or as expressly incorporated into a contract.

(2) *Significant guidance document* means a guidance document that may reasonably be anticipated to:

(i) Lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(iii) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

(3) *Pre-enforcement ruling* means a formal written communication by an agency in response to an inquiry from a person concerning compliance with legal requirements that interprets the law or applies the law to a specific set of facts supplied by the person. *Pre-enforcement ruling* includes, but is not limited to:

(i) Informal guidance under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Title II), as amended;

(ii) Letter rulings;

(iii) Advisory opinions; and

(iv) No-action letters.

(4) *Guidance Portal* means the single, searchable, indexed database located at *www.justice.gov/guidance* that the Department has established pursuant to section 3(a) of Executive Order 13891.

(5) *Contract* includes, but is not limited to, a grant or cooperative agreement.

(b) *Limitation on use of guidance documents in litigation.* (1) Criminal and civil enforcement actions brought by the Department must be based on violations of applicable legal requirements, not mere noncompliance with guidance documents issued by federal agencies, because guidance documents cannot by themselves create binding requirements that do not already exist by statute or regulation. Thus, the Department should not treat a party's noncompliance with a guidance document as itself a violation of applicable statutes or regulations. The Department must establish a violation by reference to statutes and regulations. The Department may not bring actions based solely on allegations of noncompliance with guidance documents. Consistent with Part 1–20.000 of the Department's *Justice Manual,* the Department may continue to rely on agency guidance documents for purposes, including evidentiary purposes that are otherwise lawful and consistent with the Federal Rules of Evidence, that do not treat such documents as independently creating binding requirements that do not already exist by statute or regulation.

(2) The Department shall not seek deference to any guidance document issued by the Department or any component after the effective date of this rule that does not substantially comply with the requirements of paragraphs (c) and (d) of this section.

(c) *Requirements for Department of Justice issuance of guidance documents*—(1) *Requirements for issuance of all guidance documents.* (i) Guidance documents may not be used as a substitute for regulation and may not be used to impose new standards of conduct on persons outside the Executive Branch, except as expressly authorized by statute or as expressly incorporated into a contract.

(ii) Each guidance document shall clearly state that it does not bind the public, except as expressly authorized by statute or as expressly incorporated into a contract. This clear statement shall be prominent in each guidance document.

(A) The clear statement shall consist of the following: ''The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or Department policies.''

(B) Where a guidance document is binding because binding guidance is expressly authorized by statute or the guidance document is expressly incorporated into a contract with a specific party or parties, the clear statement described in paragraph

(c)(1)(ii)(A) of this section shall be modified to reflect either of those facts.

(C) Nothing in this section shall be construed to prevent a guidance document from stating that the underlying law it discusses, as opposed to the guidance document itself, is binding.

(iii) Each guidance document shall:

(A) Include the term ''guidance'';

(B) Identify the component issuing or maintaining the document;

(C) Identify the activities to which and the persons to whom the document applies;

(D) Include the date of issuance;

(E) Note if it is a revision to a previously issued guidance document and, if so, identify the guidance document that it replaces;

(F) Provide a title and unique document identification number;

(G) Include citations of the statutory provisions or regulations to which it applies or which it interprets;

(H) Include the clear statement specified in paragraph (c)(1)(ii) of this section; and

(I) Include, at the top of the document, a short summary of the subject matter covered in the document.

(2) *Requirements for significant guidance documents.* Unless the Department, or a component, has sought and obtained an exemption pursuant to section 4(a)(iii) of Executive Order 13891, the following requirements shall apply to a significant guidance document, except that the following requirements shall not apply to a pre-enforcement ruling:

(i) *Approval and signature.* Before issuance, a significant guidance document shall be approved and signed, on a non-delegable basis, by the Attorney General, by the Deputy Attorney General, or by the head of a component whose appointment to office is required to be made by the President.

(ii) *Submission to the Office of Information and Regulatory Affairs (''OIRA'') of the Office of Management and Budget (''OMB'').* Before issuance, a significant guidance document shall be submitted to OIRA, through the Department's Office of Legal Policy, for review under Executive Order 12866, unless the Administrator of OIRA has issued a categorical exception applicable to the guidance document through a memorandum issued pursuant to section 4(b) of Executive Order 13891. The Department will seek a determination of significance from OIRA for certain guidance documents, as appropriate, in the same manner as for rulemakings.

(iii) *Notice and comment and response.* (A) Before issuance, a significant guidance document shall be made available for public notice and comment for no less than 30 days, except when the Department or a component finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Any such finding, and a brief statement of reasons therefor, shall be incorporated into any significant guidance document that is not made available for public notice and comment.

(B) Notice that a draft significant guidance document is available for public comment shall be accomplished by publication of a notice in the **Federal Register** and posting of the draft significant guidance document on the Guidance Portal. The document that is published in the **Federal Register** shall announce the availability of a draft significant guidance document, provide a title and descriptive summary of the draft significant guidance document, and state the length of the comment period and the method or methods by which public comments may be submitted.

(C) The Department shall ensure that persons with disabilities are afforded an opportunity to comment during any period of public notice and comment that is equal to that afforded to other members of the public.

(D) The Department shall make comments available to the public for online review by posting them on the Guidance Portal or on another website with a direct link to the Guidance Portal.

(E) The Department or a component seeking to issue a significant guidance document need not respond to every comment or issue raised in a comment, but the Department or a component shall provide a public response to each major concern raised in comments. The Department or a component shall also provide a public explanation of the Department's or component's choices in the final guidance document, including why the Department or component did or did not agree with relevant suggestions from commenters.

(F) The public response to comments shall be incorporated into the final guidance document or into a companion document that is made available on the Guidance Portal.

(iv) The development and issuance of significant guidance documents shall comply with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Orders 12866, 13563, 13609, 13771, and 13777.

(3) *Contact.* Components having questions regarding implementation of § 50.27(c) should contact the Department's Office of Legal Policy.

(d) *Public access to all guidance documents.* (1) All final guidance documents for which OMB has not issued a waiver or extension pursuant to section 3(c) of Executive Order 13891 shall be publicly available on the Guidance Portal.

(2) Except for a guidance document for which OMB has issued a waiver or extension pursuant to section 3(c) of Executive Order 13891, a guidance document shall not represent the Department's policy on a statutory, regulatory, or technical issue or represent the Department's interpretation of a statute or regulation unless and until it is publicly available on the Guidance Portal.

(e) *Department's reliance on guidance documents.* (1) No guidance document that has been withdrawn or superseded by modification may be cited, used, or relied upon by the Department for purposes other than to establish historical facts.

(2) Final guidance documents that are expressly incorporated into a contract with a specific party or parties may be cited, used, or relied upon by the Department with respect to that contract.

(3) Except as provided in paragraph (e)(2) of this section, of the final guidance documents for which OMB has not issued a waiver or extension pursuant to section 3(c) of Executive Order 13891, only those that are publicly available on the Guidance Portal may be cited, used, or relied upon by the Department for purposes other than to establish historical facts.

(f) *Procedure to petition for withdrawal or modification of a guidance document.* (1) Any member of the public may petition to withdraw or modify a guidance document.

(2) A member of the public wishing to petition for the withdrawal or modification of a guidance document shall submit a petition in writing, directed to the component that issued or maintains the guidance document, containing a statement of reasons for the petition. Upon receipt of a petition for withdrawal or modification, the receiving component shall forward a copy of the petition to the Department's Office of Legal Policy, which shall coordinate such requests.

(3) The Guidance Portal shall provide clear instructions to members of the public regarding how to submit a petition for the withdrawal or modification of a guidance document, including an email address or web portal where electronic petitions can be submitted, a mailing address where

petitions can be submitted, and instructions that petitions shall:

(i) Be in writing (which may include using electronic means) and, if the petition is not in English, be accompanied by an English translation;

(ii) Be directed to the component that issued or maintains the guidance document;

(iii) Be titled as a petition for withdrawal or a petition for modification of a guidance document;

(iv) Identify the guidance document at issue; and

(v) Contain a statement of the reasons for the petition.

(4) The component that issued or maintains the guidance document shall respond to a petition in writing (which may include using electronic means) no later than 90 days after it receives the petition. The response shall state whether the petition is granted, granted in part and denied in part, denied, or provisionally denied for lack of adequate information. If the petition is provisionally denied for lack of adequate information, the response shall indicate what additional information is necessary to adjudicate the petition. Upon receipt of the necessary additional information, the receiving component shall forward the information to the Department's Office of Legal Policy, and the component that issued or maintains the guidance document shall respond to the petition in writing no later than 90 days after it receives the necessary additional information. The response shall state whether the petition is granted, granted in part and denied in part, or denied.

(5) The Department or a component may consider in a coordinated manner, or provide a coordinated response to, similar petitions for withdrawal or modification.

(g) *Exclusions.* (1) Notwithstanding any other provision in this section, except for the provisions of paragraph (b)(1) of this section, nothing in this rule shall apply:

(i) To any action that pertains to foreign or military affairs, or to a national security or homeland security function of the United States (other than guidance documents involving procurement or the import or export of non-defense articles and services);

(ii) To any action related to a criminal investigation or prosecution, including undercover operations, or any civil enforcement action or related investigation by the Department, including any action related to a civil investigative demand under 18 U.S.C. 1968;

(iii) To any investigation of misconduct by an agency employee or any disciplinary, corrective, or employment action taken against an agency employee;

(iv) To any document or information that is exempt from disclosure under section 552(b) of title 5, United States Code (commonly known as the Freedom of Information Act); or

(v) In any other circumstance or proceeding to which application of this rule, or any part of this rule, would, in the judgment of the Attorney General or his designee, undermine the national security.

(2) Notwithstanding any other provision in this regulation, except for the provisions of paragraph (b)(1) of this section, nothing in this regulation shall apply to categories of guidance documents made exempt from Executive Order 13891 by the Administrator of OIRA through memoranda issued pursuant to section 4(b) of Executive Order 13891.

Dated: August 21, 2020.

William P. Barr,

Attorney General.

[FR Doc. 2020–19030 Filed 10–6–20; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF JUSTICE

28 CFR Part 68

[EOIR Docket No. 19–0312; A.G. Order No. 4840–2020]

RIN 1125–AB06

Office of the Chief Administrative Hearing Officer, Chief Administrative Law Judge

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Interim final rule; request for comment.

SUMMARY: The Department of Justice (''Department'') is amending the regulations governing the Office of the Chief Administrative Hearing Officer to reflect the creation of the position of Chief Administrative Law Judge and make technical corrections.

DATES: *Effective date:* October 7, 2020.

Comments: Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before November 6, 2020. The electronic Federal Docket Management System at *www.regulations.gov* will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: If you wish to provide comment regarding this rulemaking, you must submit comments, identified by the agency name and reference RIN 1125–AB06 or EOIR Docket No. 19–0312, by one of the two methods below:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Mail:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125–AB06 or EOIR Docket No. 19–0312 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule via one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied by an English translation. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFYING INFORMATION'' in the first paragraph

of your comment and identify the information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.*

Personally identifying information located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. The Departments may withhold from public viewing information provided in comments that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.* To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the ''For Further Information Contact'' paragraph above for the agency contact information.

II. Purpose of This Rule

A. Chief Administrative Law Judge

The Office of the Chief Administrative Hearing Officer (''OCAHO'') is a component of the Executive Office for Immigration Review (''EOIR''), which is also an office of the Department of Justice. *See* 8 CFR 1003.0(a). An Administrative Law Judge (''ALJ'') in OCAHO has jurisdiction to, among other matters, decide cases arising under sections 274A, 274B, and 274C of the Immigration and Nationality Act (''INA'') (8 U.S.C. 1324a, 1324b, and 1324c).[1] *See generally* 28 CFR part 68. These cases seek the imposition of civil penalties and other remedies against persons or entities alleged to have violated the provisions of these sections.

The Department is amending the regulations that govern OCAHO to recognize the creation of a Chief Administrative Law Judge (''CALJ'') position and to delineate the responsibilities and authorities of the CALJ and the Chief Administrative Hearing Officer (''CAHO''). In addition to serving as an ALJ, the CALJ will serve as the direct supervisor of the OCAHO ALJs and related ALJ support staff.[2] *See* Interim Final Rule at 68.2. In turn, the CAHO will supervise the CALJ. Although the CAHO will continue to designate the presiding ALJ in each case as an initial matter, the CALJ may reassign ALJs as necessary to promote administrative efficiency (*e.g.,* if the previously assigned ALJ becomes unavailable or is disqualified). *See* Interim Final Rule at 28 CFR 68.26, 68.29, 68.30(c). This interim final rule (''interim final rule'' or ''rule'') makes additional technical edits to 28 CFR part 68 to amend various references to the ''Chief Administrative Hearing Officer'' to read ''Chief Administrative Law Judge.''

OCAHO is expanding its reach nationwide to account for an expected increase in volume of new case filings, particularly under sections 274A and 274B of the INA. *See, e.g.,* Immigration and Customs Enforcement, *ICE Worksite Enforcement Investigations in FY18 Surge* (Dec. 11, 2018), *https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge* (indicating a threefold increase in investigations under section 274A in FY 2018); Department of Justice, *Departments of Justice and State Partner to Protect U.S. Workers from Discrimination and Combat Fraud* (Oct. 11, 2017), *https://www.justice.gov/opa/pr/departments-justice-and-statepartner-protect-us-workers-discrimination-and-combat-fraud* (outlining a ''Protecting U.S. Workers Initiative'' that includes cases brought under section 274B). The expansion of OCAHO's ALJ corps nationwide necessitates a CALJ position to ensure coordination and appropriate management oversight of the corps. The CALJ also further buffers the CAHO's management and administrative functions for OCAHO from the supervisory responsibilities for the ALJs and ensure that the CAHO does not inadvertently create a conflict during the adjudication of a case that would later require the CAHO's recusal from conducting any administrative review of that adjudication. 28 CFR 68.53, 68.5.

To further avoid potential recusal issues based on OCAHO's size, the interim final rule also clarifies that (1) if an ALJ is disqualified from adjudicating a case, the CALJ will reassign the case to another ALJ; (2) if the CALJ is disqualified from adjudicating a case, the CAHO will reassign the case to another ALJ; and (3) if the CAHO is disqualified from reviewing an interlocutory order under 28 CFR 68.53 or a final order under 28 CFR 68.54, the review will be reassigned to the EOIR Director. The interim final rule also clarifies that the disqualification procedures for ALJs in 28 CFR 68.30 also apply to the CAHO conducting an administrative review under 28 CFR 68.53 or 68.54.

Most Federal administrative agencies that utilize ALJs—including the other Department component that has ALJs, the Drug Enforcement Administration, *see* Drug Enforcement Administration, *Administrative Law Judges* (last visited Aug. 14, 2020), *https://www.dea.gov/administrative-law-judges*—have a CALJ position with similar management and oversight functions as those assigned to the OCAHO CALJ. *See, e.g.,* 5 CFR 2421.10 (Federal Labor Relations Authority); 7 CFR 2.27(b) (Department of Agriculture); 14 CFR 385.10 (Department of Transportation); 20 CFR 404.937 and 416.1437 (Social Security Administration); 20 CFR 801.2 (Department of Labor); 30 CFR 44.15 (Mine Safety and Health Administration); 40 CFR 305.4 (Environmental Protection Agency); 47 CFR 0.351 (Federal Communications Commission). The CALJ position is similar to the supervisory immigration judge positions in the Office of the Chief Immigration Judge, 8 CFR 1003.9(a), which assist the Chief Immigration Judge with the management and supervision of the immigration judges nationally.

B. Technical Changes

This rule makes technical changes at 28 CFR 68.15, 68.23, 68.33, 68.55, and 68.57. These provisions contain outdated references to the former Immigration and Naturalization Service (''INS''). The Homeland Security Act of 2002, Public Law 207–296, 116 Stat. 2135, as amended, transferred the responsibilities of the INS to the newly created Department of Homeland Security (''DHS''). Accordingly, the Department is updating these references to reflect the current agency organization.

This rule also italicizes defined terms in 28 CFR 68.2 to improve clarity, makes stylistic changes in 28 CFR 68.2 to improve clarity, and amends a typographical error in the cross-reference at 28 CFR 68.33(d)(iv).

[1] OCAHO ALJs may serve other functions, including the adjudication of cases in immigration proceedings under other provisions of the INA.

[2] Because the CALJ may serve as an ALJ in a proceeding before OCAHO, references to ''ALJ'' in 28 CFR part 68 include the CALJ, whenever the CALJ is acting in that capacity. Accordingly, the Department believes that the current regulations appropriately provide for the CALJ when they reference ''ALJ,'' and, therefore, this rulemaking need not amend the regulations in part 68 to expressly include ''CALJ'' whenever the regulations provide for the authority or role of an ALJ in a proceeding.

III. Regulatory Requirements

A. Administrative Procedure Act

The Department has determined that this rule is not subject to the general requirements of notice and comment and a 30-day delay in the effective date. The requirements of 5 U.S.C. 553 do not apply to these regulatory changes creating the CALJ position because it is a rule of ''agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). The Department also finds good cause to issue the technical changes without notice and comment, as those procedures are unnecessary. 5 U.S.C. 553(b)(B) and (d)(3). These changes are non-substantive. They simply reflect the current government organization as determined by Congress in 2002 and follow other similar amendments by the Department to the regulations governing EOIR. *See, e.g.,* 77 FR 59567, 59569 (Sep. 28, 2012) (describing similar updated references to DHS in chapter V of 8 CFR).

The Department is nonetheless promulgating this rule as an interim rule, providing the public with opportunity for post-promulgation comment before the Department issues a final rule on these matters.

B. Regulatory Flexibility Act

The Department has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. 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 $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804. This action pertains to agency management or personnel and is a rule of agency organization that does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' as that term is used in 5 U.S.C. 804(3). Further, this rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the reports to Congress and the Government Accountability Office specified by 5 U.S.C. 801 are not required.

E. Executive Order 12866, Executive Order 13563, and Executive Order 13771 (Regulatory Planning and Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 also emphasizes the importance of using the best available methods to quantify costs and benefits, and of reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and, for all qualifying regulations, to identify at least two existing regulations for elimination. Notably, the requirements in Executive Order 13771 do not apply to regulations involving agency organization, management, or personnel.

Because this rule is limited to agency organization, management, or personnel matters, it is not subject to review by the Office of Management and Budget pursuant to section 3(d)(3) of Executive Order 12866. Further, because this rule is one of internal organization, management, or personnel, it is not subject to the requirements of Executive Orders 13563 and 13771.

F. Executive Order 13132 (Federalism)

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This rule does not propose new or revisions to existing ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Pubic Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil Rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-discrimination.

Accordingly, for the reasons set forth in the preamble, part 68 of chapter I of title 28 is amended as follows:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS, UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES, AND DOCUMENT FRAUD

■ 1. The authority citation for part 68 continues to read as fol1ows:

Authority: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

■ 2. Amend § 68.2 by:
■ a. Revising the definition of ''Chief Administrative Hearing Officer,''
■ b. Adding a definition for ''Chief Administrative Law Judge'' in alphabetical order; and
■ c. Revising the definitions of ''complainant'' and ''pleading''.

The revisions and addition read as follows:

§ 68.2 Definitions.

* * * * *

Chief Administrative Hearing Officer is the official who, under the Director, Executive Office for Immigration Review, exercises administrative supervision over the Chief Administrative Law Judge and others assigned to the Office of the Chief Administrative Hearing Officer (OCAHO). Subject to the supervision of the Director, the Chief Administrative Hearing Officer shall be responsible for the management and direction of hearings and duties within the jurisdiction of OCAHO. The Chief Administrative Hearing Officer shall have no authority to direct the result of an adjudication assigned to an administrative law judge unless done so

in accordance with the review process in this part, provided, however, that nothing in this part otherwise shall be construed to limit the authority of the Chief Administrative Hearing Officer to carry out his or her duties. In coordination with the Director, and following consultation with the Chief Administrative Law Judge, the Chief Administrative Hearing Officer is authorized to:

(1) Advise the Office of Policy on the issuance of operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(2) Advise the Office of Policy on the provision of appropriate training of the administrative law judges and other OCAHO staff on the conduct of their authorities and duties;

(3) Direct the conduct of employees assigned to OCAHO to ensure the efficient disposition of all pending cases, including the authority to regulate the initial assignment of administrative law judges to cases and to set priorities or time frames for the resolution of cases;

(4) Evaluate the activities performed by OCAHO by making appropriate reports and inspections, and taking corrective action where needed, provided that nothing in this part shall be construed as providing for the performance evaluation of an administrative law judge;

(5) Adjudicate cases on administrative review, as provided in this part; and

(6) Exercise such other authorities as the Director may provide;

Chief Administrative Law Judge means an Administrative Law Judge who, in addition to performing the general duties of an Administrative Law Judge, serves as the immediate supervisor of all other Administrative Law Judges in the Office of the Chief Administrative Hearing Officer and performs other regulatory duties as identified in this part and elsewhere. Subject to the supervision of the Director and the Chief Administrative Hearing Officer, the Chief Administrative Law Judge shall be responsible for the supervision, direction, and scheduling of the administrative law judges in the conduct of the hearings and duties assigned to them. The Chief Administrative Law Judge shall have no authority to direct the result of an adjudication assigned to another Administrative Law Judge, provided, however, that nothing in this part shall otherwise be construed to limit the authority of the Chief Administrative Law Judge to carry out his or her duties. In coordination with the Director and the Chief Administrative Hearing Officer, the Chief Administrative Law Judge is authorized to:

(1) Advise the Office of Policy on the issuance of operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(2) Advise the Office of Policy on the provision of appropriate training of the administrative law judges and other OCAHO staff on the conduct of their authorities and duties;

(3) Direct the conduct of employees assigned to an administrative law judge team in OCAHO to ensure the efficient disposition of all pending cases, including the authority to regulate the assignment of administrative law judges to cases to promote administrative efficiency and the authority to set priorities or time frames for the resolution of cases;

(4) Evaluate the activities performed by administrative law judge teams by making appropriate reports and inspections, and take corrective action where needed, provided that nothing in this part shall be construed as providing for the performance evaluation of an administrative law judge;

(5) Adjudicate cases as an administrative law judge; and

(6) Exercise such other authorities as the Director or Chief Administrative Hearing Officer may provide;

Complainant means the Department of Homeland Security in cases arising under sections 274A and 274C of the INA. In cases arising under section 274B of the INA, ''complainant'' means the Special Counsel (as defined in this section), and also includes the person or entity who has filed a charge with the Special Counsel, or, in private actions, an individual or private organization;

* * * * *

Pleading means the complaint, the answer thereto, any motions, any supplements or amendments to any motions or amendments, and any reply that may be permitted to any answer, supplement, or amendment submitted to the Administrative Law Judge or, when no judge is assigned, the Chief Administrative Law Judge;

* * * * *

■ 3. Amend § 68.3 by revising paragraphs (a) introductory text and (c) to read as follows:

§ 68.3 Service of complaint, notice of hearing, written orders, and decisions.

(a) Service of complaint, notice of hearing, written orders, and decisions shall be made by the Office of the Chief Administrative Hearing Officer, the Chief Administrative Law Judge, or the Administrative Law Judge to whom the case is assigned either:

* * * * *

(c) In circumstances where the Office of the Chief Administrative Hearing Officer, the Chief Administrative Law Judge, or the Administrative Law Judge encounters difficulty with perfecting service, the Chief Administrative Hearing Officer, the Chief Administrative Law Judge, or the Administrative Law Judge may direct that a party execute service of process.

■ 4. Amend § 68.8 by revising paragraphs (b) and (c)(2) to read as follows:

§ 68.8 Time computations.

* * * * *

(b) *Computation of time for filing by mail.* Pleadings are not deemed filed until received by the Office of the Chief Administrative Hearing Officer, the Chief Administrative Law Judge, or the Administrative Law Judge assigned to the case.

* * * * *

(c) * * *

(2) Whenever a party has the right or is required to take some action within a prescribed period after the service upon such party of a pleading, notice, or other document (other than a complaint or a subpoena) and the pleading, notice, or document is served by ordinary mail, five (5) days shall be added to the prescribed period unless the compliance date is otherwise specified by the Chief Administrative Hearing Officer, the Chief Administrative Law Judge, or the Administrative Law Judge.

§ 68.15 [Amended]

■ 5. Amend § 68.15 by removing the words ''Immigration and Naturalization Service'' and adding in their place the words ''Department of Homeland Security''.

■ 6. Revise § 68.26 to read as follows:

§ 68.26 Designation of Administrative Law Judge.

Hearings shall be held before an Administrative Law Judge appointed under 5 U.S.C. 3105 and assigned to the Department of Justice. The presiding judge in any case shall be initially designated by the Chief Administrative Hearing Officer. The Chief Administrative Law Judge may reassign a case previously assigned to an Administrative Law Judge to promote administrative efficiency. In unfair-immigration-related employment practice cases, only Administrative Law

Judges specially designated by the Attorney General as having special training respecting employment discrimination may be chosen by the Chief Administrative Hearing Officer or Chief Administrative Law Judge to preside.

§ 68.29 [Amended]

■ 7. Amend § 68.29 by removing the words ''Hearing Officer'' and adding in their place the words ''Law Judge''.

■ 8. Amend § 68.30 by:

■ a. Removing the words ''Hearing Officer'' and adding in their place the words ''Law Judge'' in paragraphs (a) and (c); and

■ b. Adding paragraphs (d) and (e).

The additions read as follows:

§ 68.30 Disqualification.

* * * * *

(d) In the event of disqualification or recusal of the Chief Administrative Law Judge as provided in this section, the Chief Administrative Hearing Officer shall refer the matter to another Administrative Law Judge for further proceedings.

(e) The disqualification procedures in this section apply to reviews by the Chief Administrative Hearing Officer conducted under § 68.53 or § 68.54. In the event of disqualification or recusal of the Chief Administrative Hearing Officer as provided in this section, the review shall be referred to the Director for further proceedings. For a case referred to the Director under this paragraph (e), the Director shall exercise delegated authority from the Attorney General identical to that of the Chief Administrative Hearing Officer as described in § 68.53 or 68.54.

§ 68.33 [Amended]

■ 9. Amend § 68.33 by:

■ a. Removing in paragraph (c)(3)(iv) the words ''paragraph (e)'' and adding in their place ''paragraph (f)''; and

■ b. Removing in paragraph (f) the words ''Immigration and Naturalization Service'' and adding in their place the words ''Department of Homeland Security''.

§ 68.55 [Amended]

■ 10. Amend § 68.55 by:

■ a. Removing the words ''Immigration and Naturalization Service'' and adding in their place the words ''Department of Homeland Security'' in paragraph (b)(1);

■ b. Removing the words ''Commissioner of Immigration and Naturalization'' and adding in their place the words ''Secretary of Homeland Security'' in four places in paragraph (b); and

■ c. Removing the words ''Commissioner's'' and adding in their place the words ''Secretary of Homeland Security's'' once in paragraph (b)(3) and twice in paragraph (d)(2).

§ 68.57 [Amended]

■ 11. Amend § 68.57 by removing the words ''the Immigration and Naturalization Service'' and adding in their place the words ''a Department of Homeland Security''.

Dated: September 2, 2020.

William P. Barr,

Attorney General.

[FR Doc. 2020–20046 Filed 10–6–20; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AQ98

Extension of Veterans' Group Life Insurance (VGLI) Application Periods in Response to the COVID–19 Public Health Emergency

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts without change a Department of Veterans Affairs (VA) interim final rule that extends by 90 days the deadlines for former members insured under Servicemembers' Group Life Insurance (SGLI) to apply for Veterans' Group Life Insurance (VGLI) coverage following separation from service in order to address the inability of former members directly or indirectly affected by the 2019 Novel Coronavirus (COVID–19) public health emergency to purchase VGLI. The final rule is in effect for one year from the date that the interim final rule was published in the **Federal Register**.

DATES: *Effective date:* October 7, 2020. *Applicability date:* VA will apply the final rule to applications or initial premiums for VGLI coverage received on or after June 11, 2020, the effective date of the interim final rule, until June 11, 2021.

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842–2000, ext. 4263. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 11, 2020, VA published an interim final rule in the **Federal Register** (85 FR 35562) to extend by 90 days the time periods under 38 CFR 9.2(c) during which former members may apply for VGLI. The 90-day extensions for former members to apply for VGLI will be in effect from June 11, 2020, through June 11, 2021.

VA received one comment. The comment stated that extension of the deadlines to apply for VGLI should not sunset one year following publication of the interim final rule but should instead sunset one year after the termination of the public health emergency declared in response to the COVID–19 outbreak. *See* Proclamation 9994 of March 13, 2020, 85 FR 15337 (Mar. 18, 2020).

Section 9.2(f)(2) states that the 90-day extensions for former members to apply for VGLI ''shall not apply to an application or initial premium received after June 11, 2021.'' VA's rationale for applying the rule for one year is that VA is obligated to manage VGLI according to sound and accepted actuarial principles. *See* 38 U.S.C. 1977(c), (f), (g). VA will utilize the one-year time period to gather and analyze data on VGLI claims experience to determine if it is actuarially sound to further extend the applicability date. VA therefore makes no change based on this comment.

For the reasons stated above and in the interim final rule notice, VA will adopt the interim final rule as final, without change.

Administrative Procedure Act

In the June 11, 2020, **Federal Register** notice, VA determined that there was a basis under the Administrative Procedure Act for issuing the interim final rule with immediate effect. We invited and received public comment on the interim final rule. This document adopts the interim final rule as a final rule without change.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits,

reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.'' This final rule is not an Executive Order 13771 regulatory action because this final rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The provisions contained in this final rulemaking are applicable to individual Veterans, and applications for VGLI, as submitted by such individuals, are specifically managed and processed within VA and through Prudential Insurance Company of America, which is not considered to be a small entity. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule has no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

Congressional Review Act

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

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, 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. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on September 1, 2020, for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

■ Accordingly, the Department of Veterans Affairs is adopting the interim final rule amending 38 CFR part 9 that published at 85 FR 35562 on June 11, 2020, as a final rule without change.

[FR Doc. 2020–19645 Filed 10–6–20; 8:45 am]

BILLING CODE 8320–01–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1610 and 1630

Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity; Cost Standards and Procedures

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises two regulations of the Legal Services Corporation (LSC. The first is the use of non-LSC funds by LSC recipients and the requirement that recipients maintain program integrity with respect to other entities that engage in LSC-restricted activities. It makes technical and stylistic updates to the rule without any substantive changes. The second is cost standards and procedures to make technical and stylistic updates and to add authority for LSC to question and disallow costs for violations of restrictions in the LSC Act involving public funds.

DATES: This final rule is effective on November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, (202) 295–1623 (phone), *mfreedman@lsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

All **Federal Register** documents for this rulemaking, comments submitted, and other related materials are published on LSC's rulemaking website at *www.lsc.gov/rulemaking.*

A. Part 1610

The Legal Services Corporation Act (LSC Act or Act), 42 U.S.C. 2996–2996l, and the riders on LSC's annual appropriations (Appropriations), Public Law 104–134, title V (1996) (as adopted by reference thereafter through Public Law 105–119, tit. V (1998), with modifications), set restrictions on recipients of grants from LSC for the delivery of civil legal aid (recipients). The Act and Appropriations also extend some of these restrictions to the use of recipients' non-LSC funds. LSC implements most of these restrictions on non-LSC funds through part 1610 of title 45 of the Code of Federal Regulations. Part 1610 also contains the program integrity rule, which requires objective integrity and independence between a recipient and any entity that engages in LSC-restricted activities. This Final Rule makes several technical changes to part 1610 to improve clarity. These changes do not alter the operation and application of part 1610.

B. Part 1630

Section 1006(b)(1)(a) of the LSC Act states that LSC ''shall have the authority to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations, and guidelines promulgated pursuant to this title . . . .'' 42 U.S.C. 2996e(b)(1)(a).

Pursuant to that authority, part 1630 provides cost standards and procedures as part of grant administration and oversight that are similar to the Uniform Guidance for federal grants provided by the Office of Management and Budget at 2 CFR part 200. Part 1630 also authorizes LSC to question or disallow costs for violations of the LSC rules or restrictions.

Corresponding with part 1610, § 1630.16 authorizes LSC to question and disallow costs when a recipient uses non-LSC funds in violation of the restrictions on non-LSC funds. This Final Rule updates § 1630.16 to make two changes: (1) Improve the coordination between this section and the restrictions on non-LSC funds in part 1610; and (2) expand this section to eliminate a gap that omits from part 1630 the use of public funds without

authorization of the public funder for activities restricted by the LSC Act.

II. Procedural History of This Rulemaking

On August 12, 2019, LSC published a Notice of Proposed Rulemaking (NPRM or Proposed Rule) at 84 FR 39787 proposing changes to 45 CFR part 1610—Use of Non-LSC Funds and to a related provision of 45 CFR part 1630—Cost Standards and Procedures. The Proposed Rule sets forth a detailed regulatory history of part 1610, 45 CFR 1630.16, and the basis for commencing this rulemaking. LSC received four comments on the Proposed Rule.

LSC had stated that the Proposed Rule did not contain any substantive changes to either rule. However, comments to the Proposed Rule identified that it would, in fact, make one substantive change to § 1630.16 to close an unexplained gap in the coverage of the rule. Upon reviewing the comments, LSC agreed and published a Further Notice of Proposed Rulemaking (FNRPM) in the **Federal Register** at 85 FR 7518 to provide clear notice of that substantive change and to provide opportunity for public comment on it. LSC did not change the proposed language for § 1630.16 from the Proposed Rule or otherwise propose new or additional changes beyond those which were identified in the Proposed Rule. Rather, LSC requested comments on the substantive change in the Proposed Rule identified by comments. LSC received four comments on the FNPRM.

Based on review of the comments received during both public comment periods, LSC has made minor changes to the proposed language in part 1610, for added clarity, and has made no changes to the proposed language for § 1630.16. On July 27, 2020, LSC Management presented this Final Rule to the Operations and Regulations Committee (Committee) of the LSC Board of Directors (Board). On that date, the Committee voted to recommend that the Board adopt this Final Rule. On July 28, 2020, the Board voted to adopt this Final Rule.

III. Discussion of Comments and Regulatory Provisions

LSC received four comments on the initial Proposed Rule. These comments generally supported the Proposed Rule. The National Legal Aid & Defender Association's Civil Council and Regulations Committee (NLADA) responded to the Proposed Rule globally and section-by-section. NLADA generally agreed with LSC that the proposed changes to part 1610 would improve clarity without making substantive changes. NLADA objected to the proposed changes to § 1630.16 that would close the unexplained enforcement gap. NLADA also noted that the Proposed Rule said that LSC was not proposing any substantive changes to parts 1610 or 1630. NLADA recommended retaining the current language, with the gap.

The Northwest Justice Project (NJP), a recipient of LSC funds, responded to ''agree[ ] in significant part with the comments submitted by [NLADA]'' and to ''identify one item on which [NJP] differ[s] from NLADA.'' Like NLADA, NJP objected to closing the enforcement gap in § 1630.16. Unlike NLADA, NJP objected to the regrouping of the restrictions in the definitions of part 1610.

The American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) submitted a comment that ''agree[d] with and support[ed]'' NLADA's comments. The National Association of IOLTA Programs (NAIP) submitted a comment asking LSC to either retain the gap in § 1630.16 or provide an additional comment period for that substantive change.

LSC received four comments to the FNRPM regarding the substantive change to § 1630.16. NLADA, SCLAID, NJP, and NAIP all submitted comments opposing the proposal to eliminate the gap in § 1630.16.

LSC now responds to the comments to both the Proposed Rule and the FNPRM. Because SCLAID and NJP largely joined the comments of NLADA, the discussion will only mention SCLAID or NJP when their comments differ from those of NLADA.

IV. Section-by-Section Discussion of Proposed Changes and Comments

A. Part 1610—Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity

LSC proposed reorganizing part 1610 into four subparts to improve the organization and coherence of the rule. No comments discussed this change or raised any objections to it. LSC will adopt the proposed four subparts in the final rule.

1. Subpart A—General Provisions

§ 1610.1 Purpose. LSC proposed several changes to state the purpose of the rule more clearly and accurately. NLADA commented that the proposed edits ''improve clarity, and we have no concerns . . . .'' LSC is adopting this section with no changes.

§ 1610.2 Definitions. LSC proposed reorganizing, rewriting, and adding to the definitions to improve clarity in the rule. The comments addressed individual definitions, which are discussed, in turn, below.

§ 1610.2(a) Use of funds. LSC proposed introducing and defining new terms for ''authorized'' and ''unauthorized'' uses of funds to more clearly apply the statutory restrictions that refer to the ''purposes for which [non-LSC funds] are provided'' by public or tribal funders. NLADA commented that ''[t]his new definition is an improvement in that it is written with greater brevity and does not lose any clarity or meaning.'' NJP, on the other hand, criticized this definition as part of its objection to the changes in § 1630.16. NJP stated that ''[a]dding 'any unauthorized use' implies extremely broad authority of LSC to regulate how a recipient is using public funds.'' NJP misunderstood these definitions. The terms ''authorized use'' and ''unauthorized use'' are defined by the ''purposes for which those funds were provided,'' as stated in the current rule. Nothing in these proposed definitions would provide LSC with any new or different authority to regulate a recipient's use of public funds as compared with the current rule.

NLADA expressed concern that the list of examples provided in the definition might be read narrowly and stated that it ''should be explicit that [the list of examples] is in fact not exhaustive.'' NLADA also had a concern that the labels in the examples for *limited purposes* or *general purposes* are unclear, undefined, and not self-evident. LSC agrees and has modified the definition to state that the examples are not exhaustive and to remove the terms *limited purposes* and *general purposes.*

§ 1610.2(b) Derived from. No comments addressed this definition.

§ 1610.2(c) Non-LSC funds. LSC proposed reorganizing and grouping together the definitions of the three types of non-LSC funds: Private funds, public funds, and tribal funds. NLADA commented that LSC could ''improve clarity by listing the definition for private funds last instead of first.'' LSC will retain the order of these definitions with the private funds first because it tracks the logical order of the application of the restrictions in § 1610.4 to private funds, public funds, and tribal funds, and it does not cause significant confusion.

§ 1610.2(d) Restrictions. LSC proposed regrouping the restrictions on non-LSC funds into three new categories: Extended restrictions, standard restrictions, and limited restrictions. Those categories align with

the application of different restrictions to different types of non-LSC funds. This definition would replace the current groupings of restrictions by statutory source (*i.e.,* the LSC Act or the LSC Appropriations). NLADA did not comment directly on the revised definitions, but it referred to them in a comment to § 1610.4 that ''NLADA also believes the structure of the proposed § 1610.4, which breaks down how different restrictions apply to different non-LSC funds[,] provides greater clarity.''

NLADA agreed with LSC's proposal to delete the current § 1610.4(d) that discusses the financial eligibility requirements in part 1611. NLADA agreed with LSC that part 1611 ''does not apply to any non-LSC funds'' and suggested that LSC add part 1611 to the list of *limited restrictions* that do not apply to non-LSC funds.

LSC agrees that adding a reference to part 1611 will add to the clarity of the rule. Unlike the restrictions in the rule, part 1611 is not a statutory prohibition expressing Congressional disfavor toward specific activities. Rather, part 1611 sets out a requirement regarding client eligibility that applies only to the LSC funds. As such, adding part 1611 in the definition of *limited restrictions* would cause confusion. Instead, LSC has added a new § 1610.4(f) stating that part 1610 does not apply to part 1611 and, thus, does not apply the requirements of part 1611 to the use of non-LSC funds.

NJP objected to the reorganization of the restrictions in these definitions and stated that, ''dividing the restrictions and prohibitions into three categories of Extended, Standard, and Limited is entirely unhelpful and creates confusion.'' NJP recommended keeping the current groupings by statute (*i.e.,* LSC Act or LSC Appropriation) because ''LSC recipients have always understood the distinction between LSC Act funding restrictions and the appropriations act entity restrictions and their exceptions.''

LSC will retain the proposed definitions because they add clarity by grouping the restrictions in the way that Congress has applied them to different types of non-LSC funds. This approach best furthers the purpose of the rule to explain and apply these restrictions to each type of non-LSC funds. Furthermore, the definitions in the existing rule that group the restrictions by statutory source introduced confusion because each statute contains restrictions that apply differently to different types of non-LSC funds. The LSC Act contains restrictions on recipients that do not apply to non-LSC funds (*e.g.,* section 1007(b)(11) regarding assisted suicide activities), that apply to some non-LSC funds (*e.g.,* section 1007(b)(1) regarding fee generating cases), and that apply to all non-LSC funds (*e.g.,* section 1006(e)(1) prohibiting the intentional identification of a recipient with the campaign of any candidate for public or political party office). Similarly, most of the restrictions in LSC's Appropriations apply to public and private funds, but some do not apply to any non-LSC funds (*e.g.,* section 504(e) permitting the use of non-LSC funds to comment on public rulemaking).

NJP also noted that, ''LSC oddly references 1608 as a standard restriction, when in fact it applies in part to both LSC funds and entities (*i.e.,* 1608.5).'' NJP is correct that part 1608 contains multiple restrictions, some of which apply to all funds of a recipient while others do not. That combination of different restrictions on different types of funds in one rule exemplifies one of the problems with the current definitions. The rule includes part 1608 as an LSC Act restriction and make no mention of § 1608.5 or other provisions of part 1608 that apply more broadly to non-LSC funds than most of the other LSC Act restrictions. The proposed rule addressed that problem by including some part 1608 restrictions in the definition of *standard restrictions* and the remaining part 1608 restrictions in the proposed § 1610.3 addressing other requirements. In the final rule, LSC added language to the definition of *standard restrictions* to make that distinction about part 1608 clearer.

NLADA recommended moving to the definition of *extended restrictions* the references to three restrictions in parts 1608 and 1612 from the proposed § 1610.3(b), (d), and (f). LSC agrees that those restrictions are better placed in the § 1610.2(d) definitions. Because those restrictions apply to non-LSC funds differently than the restrictions in the proposed definitions for *extended, standard, and limited restrictions,* LSC has added them in a new, fourth, definition for ''other restrictions,'' as discussed with the comments on § 1610.3. LSC has also added a parallel provision at § 1610.4(e) addressing the application of these three *other restrictions* to non-LSC funds.

§§ 1610.2(e)–(h). None of the comments addressed these proposed definitions, which LSC has adopted without change in the final rule.

§ 1610.3 Other requirements on non-LSC funds. LSC proposed moving the content of the current § 1610.3 to § 1610.4. In its place, LSC proposed creating a new section cross-referencing other LSC regulations that contain restrictions and requirements that apply to non-LSC funds in ways that are different than the restrictions listed in the definitions in § 1610.2(d). The proposed § 1610.3 states that those regulations, not part 1610, address how they apply to the use of non-LSC funds. For example, § 1608.4 prohibits the use of any political test or qualification by a recipient without regard to which funds are used.

NLADA agreed with this approach to four of the referenced requirements. As to the other three, NLADA stated that they are more properly characterized as restrictions and suggested moving them to the definition of *extended restrictions* in § 1610.2(d). LSC agrees with NLADA that those three restrictions should appear with the other restrictions in § 1610.2(d), but disagrees that they should be classified as *extended restrictions* because they are not based on the funds used (*e.g.,* § 1608.4 prohibiting use of any political test or qualification). Therefore, rather than add them to the *extended restrictions* definition, LSC has instead moved them to a new definition for *other restrictions* in § 1610.2(d)(4). As discussed in the summary of § 1610.2(d), these changes also address NJP's comments about confusion regarding some of the restrictions included in this section in the Proposed Rule.

LSC retained the reference to the other four regulations in § 1610.3 because they are not restrictions. Rather, they are affirmative requirements that apply regardless of the source of the funds used (*e.g.,* part 1635—Timekeeping). LSC also updated the title and language in this section to make clear that part 1610 does not alter the way that the referenced regulations apply these requirements to non-LSC funds.

2. Subpart B—Use of Non-LSC Funds

§ 1610.4 Prohibitions on the use of non-LSC funds. The Proposed Rule relocated and restated the application of the restrictions to non-LSC funds from § 1610.3 to the new § 1610.4 using the new definitions in § 1610.2. NLADA stated that the new structure of this section ''provided greater clarity'' and the use of the new definitions is an ''improvement.'' NJP disagreed with the new approach for the reasons stated in the discussion of the definition of restrictions in § 1610.2(d). LSC decided to retain the proposed definitions and restructuring in this section because they more accurately present the ways that the different restrictions apply to different types of non-LSC funds in the LSC Act and Appropriations.

LSC added two new paragraphs to § 1610.4 in the final rule. First, LSC added a new § 1610.4(e) to correspond with the new definition for *other restrictions* in § 1610.2(d)(4), as discussed with the comments to that definition and § 1610.3. The new section explains that parts 1608 and 1612, which implement the *other restrictions,* govern how they apply to non-LSC funds. Second, as discussed in reference to § 1610.2(d), LSC added a new § 1610.4(f) stating that part 1610 does not apply to the financial eligibility requirements of part 1611.

§ 1610.5 Grants, subgrants, donations, and gifts made by recipients. The proposed rule clarified the application of part 1610 to the non-LSC funds of entities receiving grants, subgrants, donations, or gifts from recipients, consistent with recent revisions to parts 1627 and 1630. NLADA generally approved of these changes and stated that ''adding the references to § 1627 [sic] and § 1630 [sic]increases clarity and ease of use in the larger regulatory framework.''

NJP expressed concern about the second clause of § 1610.5(c) regarding non-LSC funds provided by recipients to other entities. LSC decided to eliminate that proposed clause because it is not necessary. Entities that receive non-LSC funds from an LSC recipient through any of these mechanisms are not LSC recipients themselves under the LSC Act or regulations (unless they otherwise receive LSC funds through a grant or subgrant). Thus, the LSC restrictions do not apply to those entities or to their use of those non-LSC funds.

§ 1610.6 Exceptions for public defender programs and criminal or related cases. LSC proposed restructuring this section and NLADA stated that it ''applauds LSC's efforts to improve clarity for this section.''

§ 1610.7 Notification to non-LSC funders and donors. LSC moved this section from § 1610.5 and proposed minor edits for clarity. NLADA stated that it ''believes these edits improve clarity, and we have no concerns as it relates to the revisions in this section.''

3. Subpart C—Program Integrity

§ 1610.8 Program integrity of recipient. LSC renumbered this section and added language to clarify that program integrity requires that the recipient does not subgrant LSC funds to an entity that engages in restricted activities. NLADA commented that ''this is an important clarification and an improvement on the current section.''

4. Subpart D—Accounting and Compliance

§ 1610.9 Accounting. LSC renumbered this section and added text to improve clarity. NLADA stated that it ''believes the revisions improve upon the current text and adds clarity.'' NLADA also suggested that LSC make clear that this section applies to all of part 1610 and incorporates the definitions of restricted activities appearing in § 1610.2(d). LSC has added language to emphasize those points.

§ 1610.10 Compliance. LSC proposed adding this new section to cross reference the cost requirements of part 1630 that apply to the use of non-LSC funds in violation of these restrictions. NLADA commented that it ''believes a cross-reference to § 1630.16 is a good idea, and we endorse adding this section.'' NLADA's concerns about changes to § 1630.16 are addressed in the discussion of that section.

B. 45 CFR Part 1630—Cost Standards and Procedures

Section 1630.16 authorizes LSC to question and disallow costs when a recipient uses non-LSC funds in violation of the restrictions on non-LSC funds. The Proposed Rule and the FNPRM proposed rewriting § 1630.16 regarding costs charged to non-LSC funds in violation of the restrictions on non-LSC funds. The proposed language would add clarity by referring directly to the prohibitions in revised §§ 1610.3 and 1610.4. The proposed language would also eliminate an enforcement gap in the current rule, which restates all the restrictions on non-LSC funds except for one: Use of public funds for activities restricted by the LSC Act without authorization of the public funder (''unauthorized use of public funds''). That omission, for which no explanation appears in the regulatory history, makes this section inconsistent with § 1010(c) of the LSC Act and the substantive restrictions on non-LSC funds stated in both the current and the proposed versions of part 1610. The Proposed Rule revised this section to eliminate that unexplained gap while retaining the authorization for recovery of LSC funds in an amount not to exceed the amount of non-LSC funds used in violation of the restrictions set out in the LSC Act and Appropriations, as incorporated in part 1610.

Section 1010(c) of the LSC Act states that funds from non-LSC sources ''shall not be expended by recipients for any purpose prohibited by this title'' and provides an exception for public or tribal funds when recipients are ''expending them in accordance with the purposes for which they are provided . . . .'' The existing § 1630.16 incorporates all restrictions on non-LSC funds in the Act and Appropriations except for omitting the reference in section 1010(c) of the Act to the restrictions on unauthorized use of public funds. By contrast, both the existing part 1610 and the revisions to part 1610 contain all of the section 1010(c) restrictions without exception. The proposed language for this section would eliminate the gap by referring to part 1610 for the substantive determination of whether any non-LSC funds were used in violation of the restrictions.

By eliminating the gap, the proposed language would also resolve the inconsistency across parts 1630, 1606, and 1623. If a recipient violates one of the restrictions, then part 1630 authorizes LSC to question and disallow the costs from the LSC grant. Depending on the severity of the violation, LSC may also suspend funding from the LSC grant pursuant to part 1623, impose a sanction through reducing funding by up to 10% of the LSC grant pursuant to part 1606, or terminate the LSC grant in part or in full pursuant to part 1606. The gap in § 1630.16 creates the only situation in which any option is unavailable. If a recipient makes unauthorized use of public funds for an LSC Act restricted activity, then LSC can suspend, reduce, or terminate funding but not use the least severe option to disallow costs.

Because elimination of the gap would substantively change the section, LSC specifically requested public comment on that change in the FNPRM and stated that comments opposing the change must address three issues, identified below. LSC received comments from NLADA, SCLAID, NAIP, and NJP. The responses to the comments are grouped by the three issues. Generally, all four comments opposed the change. For the reasons set out below, LSC disagrees with the comments and has adopted in the final rule the language for § 1630.16 as set out in the proposed rule.

1. Identify a Valid Purpose for the Gap Consistent With the Statutory Restrictions

None of the comments identified a valid purpose for the gap consistent with the clear language of section 1010(c) of the LSC Act prohibiting use of public funds for activities restricted by the Act unless engaging in those restricted activities is ''in accordance with the purposes for which [the public funds] are provided . . . .'' The comments either disregard the language in § 1010(c) of the LSC Act or ask LSC

to disregard it. NLADA cites to floor statements by multiple senators that the LSC Act restrictions will not affect public funds without mentioning the caveat in the Act that the public funds must be used for the purpose for which they were provided. Those floor statements cannot override the explicit text of the Act, nor does NLADA argue that they should in part 1610 or in the enforcement options set forth in parts 1606 and 1623.

Instead, the comments erroneously interpreted the proposed rule as changing how LSC would determine whether a recipient has violated an LSC Act restriction. NLADA summarized the criticism as follows: ''To parse out the words 'in accordance with the purposes for which they are provided' as a restricting clause, allowing LSC to interpret the intent of public funders, potentially even contrary to that specific public funder's interpretation of their own conditions, would go against the statutory intent of the LSC Act.'' None of the comments point to any language in the proposed rule that support this contention about how LSC would handle that determination. Furthermore, the proposed changes to this section and to part 1610 are entirely consistent with NLADA's suggested reading of section 1010(c) that ''even though public funds might be given for a purpose disallowed by the provisions of the LSC Act, LSC recipients would still be free to receive funds and spend them 'in accordance with the purposes for which they are provided.' ''

Similarly, NLADA observed that the district court in *National Center for Youth Law* v. *Legal Services Corp.,* 749 F. Supp. 1013 (N.D. Cal. 1990) (*Center for Youth Law*), held that LSC may not ''review de novo a state agency's determination of eligibility for a state legal services grant program and supplant the state's decision with its own.'' Nothing in the current or proposed rules contemplates LSC acting contrary to the holding in *Center for Youth Law.* The decision only addressed LSC's lack of authority to overrule a public funder's stated decision about the purpose of its grant to a recipient. Nothing in the decision limits LSC's authority to enforce § 1010(c) of the Act when, in fact, a recipient uses public funds in violation of a restriction in the LSC Act and does so contrary to the purposes for which they were provided.

SCLAID agreed with NLADA's comments and stated that the proposed revisions to this section ''appear to shift'' to LSC inquiries into the purpose of public funds when ''[i]n the past, LSC has referred questions about the authorized use of non-LSC funds to the entity that granted the funds.'' Nothing in the proposed rule addressed or changed how LSC handles those determinations. The inquiries into the purpose of public funds that are required by section 1010(c) of the Act appear in the existing part 1610 and are unchanged in these revisions to part 1610.

SCLAID also expressed concern about shifting to LSC ''the decision to recoup funds [that in the past] has been left to the entity that granted the funds.'' Nothing in the proposed rule would ''shift to LSC'' any responsibility from a public funder regarding oversight of its grant or decisions it makes regarding recoupment of public funds. Rather, this section deals with separate authority for LSC to disallow costs based on a violation of the restrictions in the LSC Act or Appropriations through a recipient's use of private, public, or tribal funds. This section of part 1630 exists, in part, out of respect for the independence of public funders from LSC. LSC does not expect and cannot compel other funders to take actions to respond to the use of their funds in violation of the LSC restrictions.

SCLAID also stated that it ''believes legal aid programs around the country should be able to receive funds from sources other than LSC without examination or regulation by LSC.'' SCLAID's policy goal directly conflicts with section 1010(c) of the LSC Act, which requires LSC to determine ''the purposes for which [public and tribal funds] are provided'' if recipients use those funds for activities restricted by the LSC Act. Congress, not LSC, decided to include in the LSC Act both that condition on the use of non-LSC funds and LSC's obligation to enforce it.

NJP expressed the concern that ''[t]he language as written potentially applies to any unauthorized use of public funds regardless of whether the use of those funds violates a restriction.'' NJP stated that the proposed language would have that effect because it authorizes a questioned or disallowed cost based on a violation of § 1610.4. NJP is mistaken. Under the Proposed Rule, a violation of § 1610.4 and a corresponding disallowed cost under § 1630.16 always requires that the recipient has engaged in one of the restricted activities set out in the § 1610.2(d) definitions.

NJP provided an example of paying for a laptop with public funds that are not available for that purchase. NJP incorrectly concluded that the proposed rule would authorize LSC to disallow costs due to a violation of § 1610.4 in that situation. To the contrary, because NJP's example does not include activities covered by one of the restrictions defined in the proposed § 1610.2(d), it does not violate the prohibition in the proposed § 1610.4 and would not support a questioned or disallowed cost under the proposed § 1630.16.

By contrast, LSC addressed a situation in 2014 involving public funds and part 1613, which prohibits providing ''legal assistance with respect to any criminal proceeding'' and implements that restriction from section 1007(b)(2) of the Act. LSC discovered that a then-recipient had used public funds for criminal cases in direct violation of the state law that provided those funds. The State of Michigan had provided the recipient with public funds for ''indigent civil legal assistance'' and prohibited using those funds ''to provide legal services in relation to any criminal case or proceeding . . . .'' MCL §§ 600.151a and 600.1485(10). When the recipient used those Michigan public funds for criminal cases, it violated the purposes for which they were provided by Michigan and did so for an activity restricted by part 1613 and section 1007(b)(2) of the LSC Act. That combination of unauthorized use of public funds and doing so for an LSC-restricted activity resulted in a violation of part 1610 under the current § 1610.3 and would also do so under § 1610.4 of the revised rule.

Nonetheless, § 1630.16 did not authorize LSC to disallow costs in that situation, even though LSC could have imposed harsher penalties such as a suspension, reduction of funding, partial termination of funding, or full termination of funding under parts 1606 and 1623. The proposed § 1630.16 would close this gap so that LSC could disallow costs if this type of violation occurs in the future, as it already can do for all other uses of non-LSC funds that violate the restrictions in the LSC Act or Appropriations.

NAIP also opposed the proposed language for § 1630.16 because ''[c]omity requires that individual IOLTA programs, not LSC, determine if, when, and to what extent IOLTA funds are used in a manner that is inconsistent with the purposes for which those funds were granted . . . .'' Per the decision in *Center for Youth Law* and as discussed above, nothing in the proposed rule would change LSC's approach to determining the purposes for which funds were provided consistent with the grant award of the public funds, applicable laws and rules, and any determinations by the funder. Congress mandated that LSC consider the purpose of the public funds in section 1010(c) of the LSC Act, and both

the existing and proposed versions of part 1610 contain that requirement without objection in the comments.

NAIP also stated that IOLTA programs, not LSC, should determine ''what remedial and/or punitive actions are required with respect to those funds.'' LSC does not propose to interfere with any public funder's enforcement of the terms of that funder's grant. Rather, the proposed language in this section provides authority for LSC to disallow costs when the recipient uses those public funds in violation of the LSC Act, which Congress has charged LSC to enforce.

2. Explain Why, for the LSC Act Restrictions, § 1630.16 Should Not Apply to Unauthorized Uses of Public Funds That Violate the LSC Act While Continuing To Apply to Unauthorized Uses of Tribal Funds That Violate the LSC Act

Rather than address the inconsistency, all comments instead recommended that LSC expand the gap so that this section would omit disallowing costs for recipient uses of both public funds and tribal funds that violate the restrictions in the LSC Act. LSC agrees that nothing in the LSC Act justifies treating public funds differently than tribal funds, but LSC declines the suggestion of expanding the gap without any justification for the inconsistency with the LSC Act, as discussed with the responses to Question One.

NLADA suggested that the gap is larger than thought because it excludes some tribal funds along with public funds. They read the provision regarding ''tribal funds used for the specific purposes for which they are provided'' to modify the term ''private funds.'' Thus, NLADA speculated that it applies only to tribal funds from foundations (which are private funds) and not to tribal funds from tribes or tribal governments. SCLAID specifically stated that they agreed with this interpretation. While NLADA presents a plausible reading of the text, it still does not provide a reason for treating these types of non-LSC funds differently in this situation when no such distinction appears in the LSC Act.

3. Explain Why § 1630.16 Should Not Apply to Unauthorized Uses of Public Funds That Violate the LSC Act While Continuing To Apply to Any Uses of Public Funds That Violate the Restrictions in the LSC Appropriations

NLADA addressed this question by stating that the Appropriations restrictions apply to public funds without regard to the purpose for which the funds were provided. By contrast, the restrictions in section 1010(c) of the LSC Act apply to public funds only when a recipient uses those funds for a purpose other than the purposes for which they were provided. Thus, the LSC Act restrictions on public funds require an additional inquiry that does not apply to the Appropriations restrictions. LSC agrees with that description, but it does not explain why this gap exists in § 1630.16 regarding costs. Rather, that difference between the statutes is an element in part 1610 for determining when different LSC restrictions apply to the use of different types of non-LSC funds.

SCLAID agreed with NLADA's comments and stated that ''there is no legislative requirement or history justifying the recovery of funds from non-LSC sources for activities not authorized by the Act.'' To the contrary, section 1006(b)(1)(A) of the LSC Act specifically provides LSC with the authority ''to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations, and guidelines promulgated pursuant to this title . . . .'' Section 1010(c) of the LSC Act explicitly states that the restrictions in the LSC Act apply to all non-LSC funds with limited exceptions. Thus, the LSC Act authorizes LSC to adopt and enforce cost standards and to question and disallow costs when a recipient violates the LSC Act restrictions with LSC or non-LSC funds. Furthermore, this section already provides LSC with authority to disallow costs based on the use of private or tribal funds in violation of the LSC Act or on the use of any non-LSC funds in violation of the Appropriations. The proposed change simply adds the use of public funds in violation of the LSC Act to harmonize this section with the statutory restrictions and their enforcement throughout the LSC regulations.

List of Subjects

45 CFR Part 1610

Grant programs—law, Legal services.

45 CFR Part 1630

Accounting, Government contracts, Grant programs—law, Hearing and appeal procedures, Legal services, Questioned costs.

For the reasons set forth in the preamble, the Legal Services Corporation amends 45 CFR chapter XVI as follows:

■ 1. Revise part 1610 to read as follows:

PART 1610—USE OF NON-LSC FUNDS; PROGRAM INTEGRITY

Subpart A—General Provisions

Sec.
1610.1 Purpose.
1610.2 Definitions.
1610.3 Other Requirements on recipients' funds.

Subpart B—Use of Non-LSC Funds

1610.4 Prohibitions on the use of non-LSC funds.
1610.5 Grants, subgrants, donations, and gifts made by recipients.
1610.6 Exceptions for public defender programs and criminal or related cases.
1610.7 Notification to non-LSC funders and donors.

Subpart C—Program Integrity

1610.8 Program integrity of recipient.

Subpart D—Accounting and Compliance

1610.9 Accounting.
1610.10 Compliance.

Authority: 42 U.S.C. 2996g(e).

Subpart A—General Provisions

§ 1610.1 Purpose.

This part is designed to implement restrictions and requirements on the use of non-LSC funds by LSC recipients and to set requirements for each LSC recipient to maintain program integrity with respect to any organization that engages in LSC-restricted activities.

§ 1610.2 Definitions.

(a) *Use of funds* means the expenditure of funds by an LSC recipient.

(1) *Authorized use of funds* means any use of funds within the purpose for which the funds were provided. The following non-exhaustive list provides examples of some of the types of purposes that a grantor, donor, or other might identify.

(i) A grant stating that the funds provided are available to support legal services for victims of domestic violence regardless of income or financial resources are authorized for those purposes;

(ii) A grant stating that the funds provided are available to support any civil legal services to people with household incomes below 200% of the Federal Poverty Guidelines are authorized for those purposes;

(iii) A private donation stating that the funds are for eviction work are authorized for that purpose; or

(iv) A private donation without any instructions from the donor or grantor regarding the use of the funds are available for any purposes.

(2) *Unauthorized use of funds* means any use of funds that is not an authorized use as defined above.

(b) *Derived from* means the recipient obtained the funds either directly from the source or as the result of a series of grants and subgrants (or similar arrangements) originating from the source. For example, a state provides public funds to a private, non-LSC-funded statewide legal aid entity. The statewide legal aid entity subgrants some of those public funds to an LSC recipient to provide services in six counties. The subgranted funds remain public funds under this rule because they are derived from public funds.

(c) *Non-LSC funds* means funds derived from any source other than LSC.

(1) *Private funds* means funds that are derived from any source other than LSC or the other categories of non-LSC funds in this section. Examples of private funds are donations from individuals or grants that do not qualify as public funds or tribal funds in this section.

(2) *Public funds* means funds that are:

(i) Derived from a Federal, State, or local government or instrumentality of a government; or

(ii) Derived from Interest on Lawyers' Trust Account (IOLTA or IOLA) programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(3) *Tribal funds* means funds that are derived from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

(d) *Restrictions* means the prohibitions or limitations on the use of LSC funds by a recipient and on the use of non-LSC funds as described in this part. LSC has four categories of restrictions: Extended, standard, limited, and other. The restrictions appear in 45 CFR parts 1600 through 1644, in the LSC Act at 42 U.S.C. 2996–2996l and in the sections of LSC's annual appropriation (Appropriations Restrictions) that incorporate the restrictions enacted in section 504 of Title V in Public Law 104–134, 122 Stat. 1321–50 (1996), as incorporated through Public Law 105–119, tit. V, § 502(a)(2), 111 Stat. 2440, 2510 (1998) and subject to modifications in other statutes.

(1) *Extended restrictions* are the restrictions on:

(i) Abortion litigation (other abortion activities are subject to a standard restriction)—Section 504(a)(14) of the Appropriations Restrictions;

(ii) Aliens (representation of non-U.S. citizens)—45 CFR part 1626;

(iii) Class actions—45 CFR part 1617;

(iv) Evictions from public housing involving illegal drug activities—45 CFR part 1633;

(v) Lobbying in general—45 CFR1612.3, subject to the limitations and exceptions in 45 CFR 1612.5 (activities that are not lobbying) and 45 CFR 1612.6 (exceptions for non-LSC funds that are a limited restriction);

(vi) Prisoner litigation—45 CFR part 1637;

(vii) Redistricting or census—45 CFR part 1632;

(viii) Solicitation of clients—45 CFR part 1638;

(ix) Training on prohibited topics—45 CFR 1612.8; and

(x) Welfare reform—45 CFR part 1639.

(2) *Standard restrictions* are the restrictions on:

(i) Abortion activities (other than abortion litigation subject to an extended restriction)—42 U.S.C. 2996f(b)(8);

(ii) Criminal proceedings—45 CFR part 1613;

(iii) Draft registration violations (violations of Military Selective Service Act) or military desertion—42 U.S.C. 2996f(b)(10);

(iv) Desegregation of schools—42 U.S.C. 2996f(b)(9);

(v) Fee-generating cases—45 CFR part 1609;

(vi) Habeas corpus (collaterally attacking criminal convictions)—45 CFR part 1615;

(vii) Organizing—45 CFR 1612.9;

(viii) Persistent incitement of litigation and other activities prohibited by rules of professional responsibility for attorneys—Section 42 U.S.C. 2996f(a)(10); and

(ix) Political activities—the provisions of 45 CFR part 1608 that are stated as restrictions on the use of LSC funds (*e.g.,* the clause of § 1608.4(b) regarding ''the use of any Corporation funds'') but not the other provisions of part 1608, which are included in the category for other restrictions (*e.g.,* § 1608.3(a) prohibiting the use of ''any political test or qualification'').).

(3) *Limited restrictions* are the restrictions on:

(i) Lobbying permitted with non-LSC funds (upon government request, in public rulemaking, or regarding state or local funding of the recipient)—45 CFR 1612.6;

(ii) Assisted suicide, euthanasia, and mercy killing—45 CFR part 1643; and

(iii) Use of appropriated LSC funds to file or pursue a lawsuit against LSC—Section 506 of the Appropriations Restrictions.

(4) *Other restrictions* are the restrictions on:

(i) Demonstrations, picketing, boycotts, or strikes—45 CFR 1612.7(a).

(ii) Political activities—the provisions of 45 CFR part 1608 other than those stated as restrictions on the use of LSC funds (which are standard restrictions) (*e.g.,* § 1608.3(a) prohibiting the use of ''any political test or qualification'' is an other restriction).

(iii) Rioting, civil disturbances, or violations of injunctions—45 CFR 1612.7(b).

(e) *Restricted activity* means an activity prohibited or limited by the restrictions.

(f) *Program integrity* means that a recipient is maintaining objective integrity and independence from any organization that engages in restricted activities, as required by subpart C of this part.

§ 1610.3 Other requirements on recipients' funds.

The following requirements apply to non-LSC funds as provided in the referenced regulations. This part neither expands nor limits those requirements.

(a) Client identity and statement of facts—45 CFR part 1636.

(b) Disclosure of case information—45 CFR part 1644.

(c) Priorities for the provision of services—45 CFR part 1620.

(d) Timekeeping—45 CFR part 1635.

Subpart B—Use of Non-LSC Funds

§ 1610.4 Prohibitions on the use of non-LSC funds.

(a) *Non-LSC funds.* Non-LSC funds may not be used by recipients for restricted activities as described in this section, subject to the exceptions in §§ 1610.5 and 1610.6 of this part.

(b) *Extended restrictions.* The extended restrictions apply to the following uses of non-LSC funds:

(1) Private funds—any use of private funds;

(2) Public funds—any use of public funds; and

(3) Tribal funds—any unauthorized use of tribal funds.

(c) *Standard restrictions.* The standard restrictions apply to the following uses of non-LSC funds:

(1) Private funds—any use of private funds;

(2) Public funds—any unauthorized use of public funds; and

(3) Tribal funds—any unauthorized use of tribal funds.

(d) *Limited restrictions.* The limited restrictions do not apply to the use of non-LSC funds.

(e) *Other restrictions.* The other restrictions apply to non-LSC funds as provided in the referenced regulations. This part neither expands nor limits those requirements.

(f) *Inapplicability to part 1611—financial eligibility.* This part does not

expand, limit, or otherwise apply to the financial eligibility rules of 45 CFR part 1611.

§ 1610.5 Grants, subgrants, donations, and gifts made by recipients.

(a) Subgrants in which a recipient provides LSC funds or LSC-funded resources as some or all of a subgrant to a subrecipient are governed by 45 CFR part 1627. That rule states how the restrictions apply to the subgrant and to the non-LSC funds of the subrecipient, which can vary with different types of subgrants.

(b) Donations and gifts using LSC funds are prohibited by 45 CFR part 1630.

(c) Use of non-LSC funds. Grants, subgrants, donations, or gifts provided by a recipient and funded entirely with non-LSC funds are not subject to this part.

§ 1610.6 Exceptions for public defender programs and criminal or related cases.

The following restrictions do not apply to: (1) A recipient's or subrecipient's separately funded public defender program or project; or (2) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment.

(a) Criminal proceedings—45 CFR part 1613;

(b) Actions challenging criminal convictions—45 CFR part 1615;

(c) Aliens—45 CFR part 1626;

(d) Prisoner litigation—45 CFR part 1637;

§ 1610.7 Notification to non-LSC funders and donors.

(a) No recipient may accept funds from any source other than LSC unless the recipient provides the source of the funds with written notification of LSC prohibitions and conditions that apply to the funds, except as provided in paragraph (b) of this section.

(b) LSC does not require recipients to provide written notification for receipt of any single contribution of less than $250.

Subpart C—Program Integrity

§ 1610.8 Program integrity of recipient.

(a) A recipient must have objective integrity and independence from any organization that engages in restricted activities. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The other organization is a legally separate entity;

(2) The other organization receives no subgrant of LSC funds from the recipient, as defined in 45 CFR part 1627, and LSC funds do not subsidize restricted activities; and

(3) The recipient is physically and financially separate from the other organization. Mere bookkeeping separation of LSC funds from other funds is not sufficient. LSC will determine whether sufficient physical and financial separation exists on a case-by-case basis and will base its determination on the totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to:

(i) The existence of separate personnel;

(ii) The existence of separate accounting and timekeeping records;

(iii) The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and

(iv) The extent to which signs and other forms of identification that distinguish the recipient from the organization are present.

(b) Each recipient's governing body must certify to LSC on an annual basis that the recipient is in compliance with the requirements of this section.

Subpart D—Accounting and Compliance

§ 1610.9 Accounting.

(a) Recipients shall account for funds received from a source other than LSC as separate and distinct receipts and disbursements in a manner directed by LSC.

(b) Recipients shall adopt written policies and procedures to implement the requirements of this part.

(c) Recipients shall maintain records sufficient to document the expenditure of non-LSC funds for any restricted activities as defined in Subpart A and to otherwise demonstrate compliance with the requirements of this part.

§ 1610.10 Compliance.

In addition to all other compliance and enforcement options, LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds, as provided in § 1630.16 of this chapter.

PART 1630—COST STANDARDS AND PROCEDURES

■ 2. The authority citation for part 1630 continues to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 3. Revise § 1630.16 to read as follows:

§ 1630.16 Applicability to non-LSC funds.

(a) No cost may be charged to non-LSC funds in violation of 45 CFR 1610.3 or 1610.4.

(b) LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds. The review and appeal procedures of §§ 1630.11 and 1630.12 govern any decision by LSC to recover funds under this paragraph.

Dated: September 15, 2020.

Mark Freedman,

Senior Associate General Counsel.

[FR Doc. 2020–20600 Filed 10–6–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RTID 0648–XA441

Pacific Island Fisheries; 2020 U.S. Territorial Longline Bigeye Tuna Catch Limits for American Samoa

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

ACTION: Announcement of a valid specified fishing agreement.

SUMMARY: NMFS announces a valid specified fishing agreement that allocates up to 1,000 metric tons (t) of the 2020 bigeye tuna limit for American Samoa to U.S. longline fishing vessels. The agreement supports the long-term sustainability of fishery resources of the U.S. Pacific Islands, and fisheries development in American Samoa.

DATES: The specified fishing agreement was valid as of August 25, 2020. The start date for attributing 2020 bigeye tuna catch to American Samoa was September 6, 2020.

ADDRESSES: The Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) describes specified fishing agreements and is available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *http://www.wpcouncil.org.*

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the action. The analyses, identified by NOAA–NMFS–2020–0120, are available from *https://www.regulations.gov/docket?D=NOAA-NMFS-2020-0120,* or from Michael D.

Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Lynn Rassel, NMFS PIRO Sustainable Fisheries, 808–725–5184.

SUPPLEMENTARY INFORMATION: In a final rule published on August 19, 2020, NMFS specified a 2020 limit of 2,000 t of longline-caught bigeye tuna for the U.S. Pacific Island territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (85 FR 50961). NMFS allows each territory to allocate up to 1,500 t of the 2,000 t limit to U.S. longline fishing vessels identified in a valid specified fishing agreement, but the overall allocation limit among all territories may not exceed 3,000 t.

On August 21, 2020, NMFS received from the Council a specified fishing agreement between the American Samoa and the Hawaii Longline Association. The Council's Executive Director advised that the specified fishing agreement was consistent with the criteria set forth in 50 CFR 665.819(c)(1). On August 25, 2020, NMFS reviewed the agreement and determined that it is consistent with the Pelagic FEP, the Magnuson-Stevens Fishery Conservation and Management Act, implementing regulations, and other applicable laws.

In accordance with 50 CFR 300.224(d) and 50 CFR 665.819(c)(9), vessels in the agreement may retain and land bigeye tuna in the western and central Pacific Ocean under American Samoa attribution specified in the fishing agreement. On September 6, 2020, NMFS began attributing bigeye tuna caught by vessels in the agreement to American Samoa. If NMFS determines that the fishery will reach the 1,000 t allocation specified in the agreement, we will restrict the retention of bigeye tuna caught by vessels in the agreement, unless the vessels are included in a subsequent specified fishing agreement with another U.S. territory.

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

Dated: September 3, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–19890 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 195
Wednesday, October 7, 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 PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AN83

Attorney Fees and Personnel Action Coverage Under the Back Pay Act

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations governing the coverage of, and attorney fee awards under, the Back Pay Act. The proposed regulations would add a definition of ''employee's personal representative'' for purposes of the payment of attorney fees and, clarify the actions qualifying for back pay, add a definition of ''personnel action'' and revise the definition of ''unjustified or unwarranted personnel action''.

DATES: Comments must be received on or before November 6, 2020.

ADDRESSES: You may submit comments, identified by the docket number and/or Regulation Information Number (RIN) and title by the following method:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: John York by telephone at (202) 606–2858 or by email at *Backpay@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is proposing revisions to regulations governing the coverage of the Back Pay Act (5 U.S.C. 5596). The Back Pay Act waives the United States' sovereign immunity and allows employees who are ''found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the[ir] pay, allowances, or differentials'' to obtain redress in the amount of pay, allowances, or differentials they would have received, but for such unjustified or unwarranted personnel actions (5 U.S.C. 5596(b)(l)). The Back Pay Act also permits payment of reasonable attorney fees in some circumstances, generally when in ''the interest of justice'' (5 U.S.C. 5596(b)(l)(A)(ii) and 7701(g)).

OPM has authority under 5 U.S.C. 5596(c) to issue regulations carrying out the Back Pay Act. These regulations are found at 5 CFR part 550, subpart H. In December 1981, OPM finalized regulations implementing the Civil Service Reform Act changes at 5 CFR part 550, subpart H, §§ 550.803 and 550.807 (46 FR 58275). OPM has not substantively revised its attorney fee regulations since.

OPM proposes modifying § 550.803 of these regulations to add a definition of the term ''personnel action'' and revise the definition of ''unjustified or unwarranted personnel action'' to clarify that an unjustified or unwarranted personnel action must involve a personnel action such as a suspension, change in grade, or removal, and that the Back Pay Act does not cover pay actions unrelated to personnel actions. OPM also proposes defining the term ''employee's personal representative'' to clarify who can request payment of attorney fees on behalf of an employee.

5 CFR Part 550, Subpart H—Back Pay

§ 550.803 Definitions

Meaning of Personnel Action

The Back Pay Act of 1966 (Pub. L. 89–390, March 30, 1966) provided for paying back pay to Federal employees who undergo an ''unjustified or unwarranted personnel action.'' The Civil Service Reform Act of 1978 (CSRA) modified the Back Pay Act to allow recovery of attorney fees, to cover personnel actions of omission as well as commission, and to cover unfair labor practices or grievances. The Back Pay Act now applies to an employee who is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or any part of the pay, allowance, or differentials of the employee (5 U.S.C. 5596(b)(1)). CSRA further defined a personnel action to include ''the omission or failure to take an action or confer a benefit'' (5 U.S.C. 5596(b)(5)).

OPM prescribed regulations defining ''unjustified or unwarranted personnel action'' on December 1, 1981 (see 46 FR 58275) and has not revised the definition since. The regulations at 5 CFR 550.803 state define ''unjustified or unwarranted personnel action'' as an act of commission or an act of omission (*i.e.,* failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement. Such actions include personnel actions and pay actions (alone or in combination).

OPM is concerned that this current regulatory definition is in tension with the text of the Back Pay Act, which only discusses personnel actions and makes no reference to pay actions unrelated to personnel actions. It is also in tension with legislative history and Supreme Court precedent indicating that Congress intended the term ''personnel action'' in the Back Pay Act to have a substantially narrower scope.

When Congress passed the Back Pay Act in 1966, it understood the term ''personnel action'' to mean a suspension, removal, or demotion. As the Senate Report accompanying the legislation stated:

> The statute's language was intended to provide a monetary remedy for wrongful reductions in grade, removals, suspensions, and other unwarranted or unjustified actions affecting pay or allowances that could occur in the course of reassignments and change from full-time to part-time work. (S. Rep. No. 1062, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. & Ad. News 2097, 2099)

In 1976, the Supreme Court unanimously interpreted the term ''personnel actions'' to apply only to such actions and rejected the contention

that the Back Pay Act applied to other actions affecting employee pay:

''[T]he Back Pay Act, as its words so clearly indicate, was intended to grant a monetary cause of action only to those who were subjected to a reduction in their duly appointed emoluments or position.'' (*United States* v. *Testan,* 424 U.S. 392, 407 (1976))

During the CSRA debate Congress considered expanding the Back Pay Act's coverage beyond personnel actions to any action affecting employee pay. The Senate passed version of the CSRA would have applied the Back Pay Act to an ''unjustified or unwarranted action taken by the agency'' (Section 702 of S. 2640 as passed the Senate, August 24, 1978). The Senate committee report noted that this change was intended to ''reflect the broader interpretation of the statute that has been given the Back Pay Act in recent years by the Comptroller General and the Civil Service Commission through decision and regulations'' (S. Rep. No. 969, 95th Cong., 2d Sess., p. 114). The House passed version retained the Back Pay Act's original ''unjustified or unwarranted personnel action'' language but expanded the definition of personnel action to include actions of omission as well as commission. (Section 702 of HR. 11208, as passed the House, September 13, 1978). The House Committee report makes no reference to broadening the Back Pay Act's application beyond this (H. Rep. No. 1403, 95th Cong., 2d Sess., pp. 60–61) final version that passed into law retained the House language, not the broader Senate language.

Notably, in the CSRA Congress included two substantially expanded definitions of ''personnel action'', but expressly limited the application of these definitions to determining when a prohibited personnel practice (PPP) has occurred in the FBI or the rest of the Federal government (5 U.S.C. 2302(a)(2)(A) and 2303(a)). Congress did not give either of these definitions general applicability across the rest of title 5, United States Code (Title 5), including the Back Pay Act.

The legislative history indicates Congress understood the Back Pay Act's definition of personnel action was limited in scope and considered broadening it to cover all actions that affect Federal employee pay but, outside the context of defining prohibited personnel practices, decided to retain the original definition with only slight modification. OPM's regulatory definition, which extends the Back Pay Act to cover pay actions unrelated to personnel actions, appears to contravene OPM's statutory authority and Congressional intent.

The structure of the Back Pay Act reinforces this conclusion. The enacted version of the CSRA ties the standards for awarding Back Pay Act attorney fees in grievance cases to the ''interest of justice'' standards in Merit Systems Protection Board (MSPB) cases (5 U.S.C. 5596(b)(l)(A)(ii)). OPM believes this makes sense if the Back Pay Act covers personnel actions similar to those appealable to the MSPB (*i.e.,* adverse actions). Congress required employees to choose either a grievance procedure or MSPB appeal but prohibited pursuing redress in both forums. Connecting Back Pay Act attorney fee awards in grievance cases to MSPB standards for attorney fees ensures the same standards apply no matter which forum the employee choses. This structure makes much less sense if the Back Pay Act also covers pay actions that are not appealable to the MSPB. It is dubious that Congress meant to grant the MSPB a role in setting attorney fee standards in cases that would never appear before the MSPB.

Other authorities reviewing Back Pay Act liability have concluded its coverage is more limited than OPM's regulations currently provide. While these agencies aren't provided the same deference as OPM on interpretation of the Back Pay Act, their decisions are notable and worthy of consideration. In 1984 the Comptroller General considered whether the Back Pay Act authorized attorney fees when an employee successfully challenged an agency's garnishing his retirement payments. The Comptroller General examined the legislative history showing that ''personnel actions'' meant ''reductions in grade, removals, suspension, and other unwarranted or unjustified actions affecting pay or allowances that could occur in the course of reassignments and change from full-time to part-time work.'' The Comptroller General concluded that the action was ''a money claim for which relief under the Back Pay Act is not available'' (Leland M. Wilson: Claim for Attorney Fees and Interest, CG B–205373 (April 24, 1984)).

The Civilian Board of Contract Appeals (CBCA) came to a similar conclusion more recently. In 2013 the CBCA heard a case from a claimant applying for interest on funds improperly collected from him, in addition to the funds themselves (see *In the Matter of JEFFREY E. KOONTZ,* Civilian Board of Contract Appeals, No. 3436–TRAV (July 23, 2013)). The claimant argued that while the Debt Collection Act did not waive sovereign immunity and allow such interest to be paid, the Back Pay Act did. The Board analyzed the Back Pay Act's text and legislative history and concluded that the Back Pay Act did not apply to pay actions unrelated to personnel actions:

[O]ne of this Board's predecessor boards analyzed the origin and purpose of the Back Pay Act with regard to the issue of whether interest could be paid when relocation expenses were not timely paid by the employee's agency. In that decision, the Board stated:

The Senate Report accompanying the Back Pay Act says that the bill ''would consolidate and liberalize existing law'' S. Rep. No. 1062, 89th Cong., 2d Sess., *reprinted* in 1966 U.S.C.C.A.N. 2097. The consolidation applied to laws dealing with separation, suspension, and demotion. 1966 U.S.C.C.A.N. at 2098. The liberalization was to ''allow credit for pay increases and accumulation of annual leave.'' *Id* at 2097. In either event, the law was supposed to pertain only to ''the restoration of an employee to his position after an adverse action against him has been found.'' *Id*

It is clear that the collection of the debt from claimant pursuant to the Debt Collection Act of 1982 was not an action contemplated within the scope of the Back Pay Act. Claimant's position was not affected by the collection of the debt, as he was neither separated, suspended, nor demoted, and the payment of the refund was therefore not the result of restoring the claimant to his position. We find no authority in law or contract that would permit payment of interest on the refund received by claimant.

The Federal Labor Relations Authority (FLRA) recently reached a similar conclusion, holding that ''Agency attempts to recoup monies that it actually overpaid grievants, however, do not constitute unwarranted and unjustified personnel actions that resulted in the withdrawal or withholding of pay under [Back Pay Act]'' (See *DoDEA and FEA,* 70 FLRA 718 (2018)).

Furthermore, the Back Pay Act waives the United States' sovereign immunity. The Supreme Court has made it clear that, ''a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign . . . when confronted with a purported waiver of the Federal Government's sovereign immunity, the Court will 'constru[e] ambiguities in favor of immunity' '' (see *Lane* v. *Pena,* 518 U.S. 187, 192 (1996)). To the extent the meaning of ''personnel action'' is open to multiple interpretations, the Supreme Court has directed that it be construed to narrow the United States' waiver of sovereign immunity.

Based upon a review of these decisions, the text and legislative history of the Back Pay Act, and Supreme Court precedent, the

regulatory definition of ''unjustified or unwarranted personnel action'' now appears to have exceeded OPM's statutory authority. The text of the Back Pay Act only mentions personnel actions, which Congress expressly understood to mean changes in grade, suspensions, removals or separations, reassignments, or changes to full- or part-time work. In the CSRA Congress expanded the definition of ''personnel action'' but only with regard to defining prohibited personnel practices, such as coercing political activities or retaliation against a whistleblower. The term ''personnel action'' does not refer to other actions that could, outside the context of a PPP, affect employee pay, such as debt collections, improper overtime payments, rejections for cash awards, leave denials, or denials of taxpayer-funded union time. In addition, Congress has expressly provided alternative means of redress for employees affected by many of these actions. For example, the Fair Labor Standards Act requires agencies to make employees denied overtime payments whole. The Debt Collection Act similarly prescribes procedures for employees to appeal potentially improper debt collections.

OPM does not have regulatory authority to extend the definition of ''personnel actions'' to include pay actions that Congress expressly declined to cover under the Back Pay Act's waiver of sovereign immunity.

OPM also has policy concerns with the existing regulations. By extending the Back Pay Act's coverage beyond personnel actions they encourage and subsidize expensive litigation over any matter that affects employee pay, such as non-selection for a performance award. For example, on January 12, 2020, an arbitrator held that the Jesse Brown VA hospital should have given an employee a $1,000 performance award. In addition to ordering the Department of Veterans Affairs to pay the performance award, the arbitrator also ordered $30,387.50 in attorney fees under the Back Pay Act. Requiring agencies to pay tens of thousands of dollars in attorney fees in litigation over much smaller performance awards wastes agency resources. It also encourages agencies to broadly distribute performance awards, to avoid litigation. This undermines the purpose of performance awards, which is to recognize, reward, and incentivize high performance.

OPM accordingly proposes changing its regulations at § 550.803 to clarify that pay actions that do not involve personnel actions do not constitute unjustified or unwarranted personnel actions under the Back Pay Act. For the same reason OPM proposes defining a personnel action as an appointment, a prohibited personnel practice under chapter 23 of title 5, United States Code, an action based on unacceptable performance under chapter 43 of title 5, United States Code, an adverse action taken under chapter 75 of title 5, United States Code, any other removal or suspension, a promotion or demotion, a change in step or grade, a transfer or reassignment, or a change from full-time to part-time work.

This definition encompasses the actions that the legislative history of the Back Pay Act indicates Congress understood ''personnel action'' meant. It includes the related acts of omission that the CSRA extended the Back Pay Act to cover, such as non-selection for a promotion or failure to increase an employee's step or grade. It also reflects the CSRA's expanding the definition of personnel action for the purpose of defining prohibited personnel practices.

Personal Representative

OPM also proposes adding a definition of the term ''employee's personal representative'' to § 550.803. This term does not appear in the Back Pay Act itself but appears in OPM's regulations at § 550.807 in the context of individuals who may request attorney fee payments. OPM proposes clarifying that an employee's personal representative is defined as the executor or administrator of a deceased employee. It should not refer to other potential representatives in administrative or legal proceedings. This definition tracks the commonly used meaning of ''personal representative'' among the Code of Federal Regulations, *e.g.,* 28 CFR 104.4, 38 CFR 38.600, 42 CFR 2.15.

OPM believes this clarification is necessary because the courts have interpreted OPM's use of this term to include labor organizations. Courts have then granted *Chevron* deference to this construction of OPM's regulations and interpreted the Back Pay Act to authorize attorney fees to labor organizations. See *American Federation of Government Employees* v. *Federal Labor Relations Authority,* 944 F.2d 922 (D.C. Circuit 1991) and *Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984) (Chevron)).

This is not what OPM meant by ''personal representative'' in its regulations. The term ''personal representative'' is a term of art the meaning of which follows OPM's proposed definition (see Black's Law Dictionary, 5th Edition, 1170 (1979)). It does not encompass other potential representatives, to include a collective bargaining representative.

The text of the Back Pay Act clearly prohibits paying attorney fees to any entity other than an individual employee. 5 U.S.C. 5596(b)(l) only authorizes back pay and attorney fee payments to ''an employee of an agency.'' 5 U.S.C. 2105(a) defines the term ''employee'' as an officer or individual who has ia—

1. Appointed in the civil service by one of the following acting in an official capacity:
   - The President;
   - a member or members of Congress, or the Congress;
   - a member of the uniformed service;
   - an individual who is an ''employee'' under 5 U.S.C. 2105
   - the head of a Government controlled corporation; or
   - the adjutant general designated by the Secretary concerned under 32 U.S.C. 709(c);
2. Engaged in the performance of a Federal function under authority of law or an Executive act; and
3. Subject to the supervision of an individual named in 5 U.S.C. 2105(a)(1) while engaged in the performance of the duties of his position.

Title 5's definition of ''employee'' refers only to employees as individuals and says nothing about groups or organizations. In addition to this plain text, the Federal Service Labor-Management Relations Statute (FSLMRS) expressly differentiates between ''persons''—which may include agencies and labor organizations as well as individuals—and ''employees'' which are only individuals (5 U.S.C.: 7103(a)(l) and (a)(2)). OPM believes that, if Congress wanted the Back Pay Act to permit attorney fee awards to unions or other organizations, Congress would have used the term ''person'' in section 5596(b)(l) instead of ''employee'', which in the context of title 5 only refers to individuals. OPM included the term ''personal representative'' as a term of art in its regulations to provide for rare circumstances in which an agency owes funds under the Back Pay Act to a deceased employee. OPM expressly noted in its 1981 rulemaking that the regulatory reference to ''personal representative'' does not address the question of who may *receive payment* for reasonable attorney fees. Rather, it provides that an employee's personal representative may *request payment* of reasonable attorney fees on the employee's behalf (46 FR 58274, December 1, 1981). OPM did not intend this term to extend entitlement to

attorney fees to organizations and believes this construction is contrary to the statutory framework Congress established. Since courts have interpreted this term beyond its intended meaning, OPM proposes revising § 550.803 to make the definition of ''personal representative'' clear and thereby clarify that other potential representatives are not entitled to attorney fees under the Back Pay Act.

OPM recognizes that the courts have construed the Back Pay Act to authorize attorney fee awards to labor organizations, and not just the employee or employees they represent. As discussed, this judicial holding rests on a misinterpretation of OPM regulations. The D.C. Circuit held in its' interpretation that OPM's definition of personal representative encompassed labor organizations and that Supreme Court precedent required deferring to this construction: ''OPM's regulation is significant as an authoritative interpretation of the Back Pay Act . . . when, as here, 'the legislative delegation to an agency on a particular question is implicit rather than explicit[,] . . . a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.' '' See *AFGE* at 930, quoting *Chevron.*

The Supreme Court has held that ''a court's prior judicial construction of a statute trumps an agency construction otherwise entitled to Chevron deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.'' See *National Cable & Telecommunications Assn.* v. *BrandX internet Services,* 545 U.S. 967, 982 (2005). Where the Court's prior construction rested on a misreading of agency regulations there is no legal impediment to the agency modifying its regulations to comport with its understanding of the statute.

Severability

OPM also proposes adding a severability clause to § 550.803. This would clarify that the provisions of the section are severable and that if any portion of this proposed regulation is held to be invalid that shall not affect the operability of the remaining portions.

Regulatory Impact Analysis

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. While this rule has been designated a ''significant regulatory action,'' under Executive Order 12866, it is not economically significant.

Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this proposed rule is expected to be no more than de minimis costs.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies and Federal employees.

Federalism

This rulemaking regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform

This proposed regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

Paperwork Reduction Act of 1995

This proposed regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, for the reasons stated in the preamble, OPM proposes to amend 5 CFR part 550, subpart H as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart H—Back Pay

■ 1. The authority citation for 5 CFR part 550, subpart H, continues to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

■ 2. Amend § 550.803 as follows:
■ a. Designate the introductory text as paragraph (a);
■ b. Add a definitions in alphabetical order for ''employee's personal representative'' and personnel action in newly designated paragraph (a).
■ c. Amend the definition for *unjustified or unwarranted personnel action;* and
■ d. Add paragraph (b).

The revisions and additions read as follows:

§ 550.803 Definitions.

* * * * *

Employee's personal representative means only the executor or administrator of a deceased employee. It does not encompass other potential employee representatives.

* * * * *

Personnel action means an appointment, an action based on a PPP under chapter 23 of title 5, United States Code, an action based on unacceptable performance under chapter 43 of title 5, United States Code, an adverse action taken under chapter 75 of title 5, United States Code, any other removal or suspension, a promotion or demotion, a change in step or grade, a transfer or reassignment, or a change from full-time to part-time work.

* * * * *

Unjustified or unwarranted personnel action means a personnel action of commission or of omission (*i.e.,* failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, or mandatory personnel policy established by an agency or through a collective bargaining agreement. It does not include pay actions that do not involve personnel actions.

* * * * *

(b) The definitions in this section are severable. If any definition in this section is held to be invalid that shall not affect the operability of the remaining definitions.

[FR Doc. 2020–20428 Filed 10–6–20; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 225, 238, and 252

[Regulations Y, LL, and YY; Docket No. R–1724]

RIN 7100–AF95

Amendments to Capital Planning and Stress Testing Requirements for Large Bank Holding Companies, Intermediate Holding Companies and Savings and Loan Holding Companies

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Board is inviting comment on a notice of proposed rulemaking (proposal) to tailor the requirements in the Board's capital plan rule (capital plan rule), which applies to large bank holding companies and U.S. intermediate holding companies of foreign banking organizations. Specifically, as foreshadowed in the Board's October 2019 rulemaking that updated the prudential framework for these companies (tailoring framework), the proposal would make conforming changes to the capital planning, regulatory reporting, and stress capital buffer requirements for firms subject to Category IV standards to be consistent with the tailoring framework. To be consistent with recent changes to the Board's stress testing rules, the proposal would make other changes to the Board's stress testing rules, Stress Testing Policy Statement and regulatory reporting requirements relating to business plan change assumptions, capital action assumptions, and the publication of company-run stress test results for savings and loan holding companies. This proposal also solicits comment on the Board's guidance on capital planning for all firms supervised by the Board, in light of recent changes to relevant regulations and as part of the Board's ongoing practice of reviewing its policies to ensure that they are having their intended effect.

DATES: Comments must be received by November 20, 2020.

ADDRESSES: You may submit comments, identified by Docket No.R–1724 and RIN 7100–AF95 by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number and RIN number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

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I. Changes to the Capital Plan Rule

A. Introduction

i. Background on Capital Planning, Stress Testing and Stress Capital Buffer Requirements

Stress testing is a core element of the Board's regulatory framework and supervisory program for large firms. Stress testing enables the Board to assess whether large firms have sufficient capital to absorb potential losses and continue lending under severely adverse conditions. The Board implemented its capital plan rule, which requires large firms to develop and maintain capital plans supported by robust processes for assessing their capital adequacy, in 2011.[1] The Board made changes to its capital rule—which establishes minimum regulatory capital requirements—in 2013. These changes address weaknesses observed during the 2008—2009 financial crisis, including the establishment of a minimum common equity tier 1 (CET1) capital requirement and a fixed capital conservation buffer equal to 2.5 percent

[1] Capital Plans, 76 FR 74631 (Dec. 1, 2011). Originally, as a part of the capital plan rule, the Federal Reserve could object to a firm's capital plan based on a qualitative assessment. A subsequent rulemaking changed this requirement such that after CCAR 2020 no firm will be subject to a potential qualitative objection if the firm successfully passed several qualitative evaluations. Amendments to the Capital Plan Rule, 84 FR 8953 (March 13, 2019). All firms subject to the capital plan rule have successfully passed the required number of qualitative evaluations such that no firms are subject to the qualitative objection going forward. As a result, the proposal would revise the capital plan rule to remove references to the qualitative objection.

of risk-weighted assets.[2] Rigorous stress testing—in conjunction with stronger capital requirements implemented in the Board's capital rule—have significantly improved the resilience of the U.S. banking system.[3]

The Board recently adopted a final rule (stress capital buffer rule) to integrate its capital plan rule and capital rule through the establishment of a stress capital buffer requirement, creating a single, risk-sensitive framework for large banking organizations.[4] To achieve individually tailored and risk-sensitive capital requirements for banking organizations subject to the capital plan rule, the stress capital buffer rule establishes the size of a firm's stress capital buffer requirement based in part on a supervisory stress test conducted by the Federal Reserve.

The stress capital buffer rule included several changes to the assumptions embedded in the supervisory stress test, notably removing the assumption that firms make all planned common distributions and excluding material business plan changes from the stress capital buffer requirement calculation. Previously, under the Comprehensive Capital Analysis and Review (CCAR), the Board required firms to pre-fund nine quarters of planned dividends and share repurchases. Under the stress capital buffer rule, firms are subject to a pre-funding requirement of four quarters of planned dividends. This approach recognizes the capital rule's automatic limitations on capital distributions while continuing to promote forward-looking capital planning and mitigate pro-cyclicality.

Prior to the implementation of the stress capital buffer rule, the impact of expected material changes to a firm's business plan were incorporated into a firm's CCAR results. In order to simplify the stress test framework and to reduce burden, material business plan changes are not included in the stress capital buffer calculation. Instead, material changes to a firm's business plan resulting from a merger or acquisition are incorporated into a firm's capital and risk-weighted assets upon consummation of the transaction.

ii. Background on Tailoring Framework

In October 2019, the Board issued a final rule that established a revised framework for applying prudential standards to large firms to align prudential standards more closely to a large firm's risk profile (tailoring rule).[5] The tailoring rule established four categories of prudential standards and applies them based on indicators designed to measure the risk profile of a firm.[6] Table I outlines the scoping criteria for categories of prudential standards finalized in the tailoring rule.

TABLE I—SCOPING CRITERIA FOR CATEGORIES OF PRUDENTIAL STANDARDS

Category	U.S. banking organizations	Foreign banking organizations
I	U.S. GSIBs and their depository institution subsidiaries	N/A.
II	$700 billion or more in total assets; or $75 billion or more in cross-jurisdictional activity; and do not meet the criteria for Category I.	
III	$250 billion or more in total assets; or $75 billion or more in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure; and do not meet the criteria for Category I or II.	
IV	$100 billion or more in total assets; and do not meet the criteria for Category I–III.	

The tailoring rule made two changes to the stress testing rules for firms subject to Category IV standards. First, the tailoring rule removed the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of company-run stress tests as defined in the Board's stress testing rules. Second, the tailoring rule changed the frequency of the supervisory stress test for firms subject to Category IV standards from annual to biennial.[7] In the tailoring rule, the Board also foreshadowed that it intended to provide greater flexibility to firms subject to Category IV standards to develop their annual capital plans and consider additional regulatory reporting burden relief in a separate proposal.[8]

iii. Summary of Proposal

The Board is issuing this proposal to conform its capital plan rule, stress capital buffer requirements, and capital planning requirements by modifying them to be consistent with its tailoring framework. Most of the significant modifications included in the proposal have been previously described by the Board, notably in its tailoring rule and stress capital buffer rule. With respect to firms subject to Category IV standards, in order to align the capital plan rule requirements with the tailoring rule changes, this proposal would generally remove the capital plan rule requirement to calculate forward-looking projections of capital under scenarios provided by the Board. In addition, for firms subject to Category IV standards, the proposal would update the frequency of calculating the portion of the stress capital buffer that is calculated as the decline in the CET1 ratio to every other year. These firms would have the ability to elect to participate in the supervisory stress test—and receive an updated stress capital buffer requirement—in a year in which they would not generally be subject to the supervisory stress test.

The proposal would also include changes to the Board's supervisory stress test and the company-run stress

[2] *See* 12 CFR part 217. Large banking organizations also became subject to a countercyclical capital buffer requirement, and the largest and most systemically important firms—global systemically important bank holding companies, or GSIBs—became subject to an additional capital buffer based on a measure of their systemic risk, the GSIB surcharge. *See* Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (Aug. 14, 2015).

[3] The common equity capital ratios of firms subject to CCAR have more than doubled since 2009. Combined, these firms hold more than $1 trillion of common equity tier 1 capital and are substantially more resilient than they were ten years ago.

[4] *See* Regulations Q, Y, and YY: Regulatory Capital, Capital Plan, and Stress Test Rules, 85 FR 15576 (March 18, 2020).

[5] *See* Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).

[6] The final rule increased the threshold for general application of these standards from $50 billion to $100 billion in total consolidated assets.

[7] Both changes related to stress testing rules for firms subject to Category IV standards—(1) to remove the requirement to conduct and to publicly disclose the results of the company-run stress tests; and (2) to change the frequency of the supervisory stress test to biennial—were consistent with amendments to section 165 of the Dodd-Frank Act made by the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA). *See* Public Law 115–174, 132 Stat. 1296 (2018).

[8] *See* 85 FR 15576, 15593, fn 57.

test rules.[9] The proposal would clarify the assumptions related to business plan changes, introduce revisions to the capital action assumptions, and would require certain savings and loan holding companies to publicly disclose their stress tests results in a parallel manner as bank holding companies.

B. Changes to Capital Planning Requirements for Firms Subject to Category IV Standards

Consistent with Section 401(e) of the EGRRCPA, the tailoring rule adjusted the frequency of supervisory stress testing for firms subject to Category IV standards to every other year and eliminated the requirement to conduct the company-run stress tests under the scenarios provided by the Board. This adjustment reflected the lower risk profile of a firm subject to Category IV standards relative to a firm subject to Category I–III standards. The proposal would update the terminology in the capital plan rule to conform to the terminology used in the tailoring framework by removing the term ''large and noncomplex bank holding company'' and replacing it with the definition of a firm subject to Category IV standards and tailor the requirements in the capital plan rule that currently apply to these firms, as discussed below.

i. Capital Plan Submissions

Under the proposal, firms subject to Category IV standards would be required to submit a capital plan to the Board annually but would generally no longer be required to calculate estimates of projected revenues, losses, reserves, and pro forma capital levels (effectively a form of stress testing) using scenarios provided by the Board. Such firms would continue to be required to provide a forward-looking analysis of income and capital levels under expected and stressful conditions. The projections are required to be tailored to and sufficiently capture the firm's exposures, activities, and idiosyncratic risks in their capital plans.[10] This includes projections under a scenario designed by the firm that stresses the specific vulnerabilities of the firm's risk profile and operations. This scenario should incorporate stressful conditions and events that could adversely affect the firm's capital adequacy. Under certain circumstances, based on the macroeconomic outlook or based on the firm's risk profile, financial condition or corporate structure, the proposal would allow the Board to require a firm subject to Category IV standards to submit a capital plan under scenarios provided by the Board. This would ensure that the Board could evaluate the firm's forward-looking capital position using a scenario designed for the specific circumstances of the macro-economy or the firm's risk profile.

In addition, firms subject to Category IV standards would no longer be required to submit to the Federal Reserve forward-looking projections in the granular form prescribed by the regulatory report FR Y–14A, Schedule A—Summary. This schedule includes over five hundred capital, revenue, expense, and balance sheet line items that a firm must project over a nine-quarter planning horizon. In this way, the firm's reporting requirements would be updated to reflect the tailoring rule's elimination of the company-run stress test requirement for a firm subject to Category IV standards, permitting the firm to estimate its capital needs using scenarios reflective of its operations and to adjust the granularity of its stress projections to better align with the materiality of the firm's business lines. The proposal would provide firms flexibility in the granularity of their forward-looking projections as they would no longer be required to submit the specific line items outlined in the FR Y–14A, Schedule A—Summary. As the projections would no longer require the same level of granularity, firms would also have more flexibility in the design of their individual stress scenarios.

While the proposal would no longer require firms subject to Category IV standards to include certain elements in their capital plans, all banking organizations, regardless of size and complexity, are expected to have the capacity to analyze the potential impact of adverse outcomes on their financial condition, including on capital. Risk management practices should be tailored to the risk and complexity of the individual institution, and should include practices to identify and assess a firm's sensitivity to unexpected adverse outcomes before they occur. The Federal Reserve would continue to conduct an annual assessment of the capital plan of a firm subject to Category IV standards as part of its ongoing supervisory process, and the results of this assessment would continue to be an input into the firm's capital planning and positions component of the Large Financial Institution Rating System.[11]

ii. Changes to Reporting Requirements Related to Capital Planning Requirements

The proposal includes several modifications to the FR Y–14 reporting requirements for firms subject to Category IV standards to align with the proposed changes to company-run stress testing requirements. The Board is proposing that firms subject to Category IV standards would no longer be required to report FR Y–14A Schedule A—Summary, Schedule B—Scenario, Schedule F—Business Plan Changes, and Appendix A—Supporting Documentation, which are used to report a firm's company-run stress test results. Firms subject to Category IV standards would be required to complete all other FR Y–14A schedules, as they are either necessary for the Board to run its supervisory stress test or a required element of the firm's capital plan.[12] In order to be able to assess whether a firm's planned capital distributions included in its capital plan would be consistent with any effective capital distribution limitations that would apply under the firm's BHC baseline projections, as required by the capital plan rule, the proposal would add four line items to the FR Y–14A Schedule C—Regulatory Capital Instruments, as this schedule is filed by all firms subject to the capital plan rule. The line items would be the projections of Common Equity Tier 1 capital ratio, Tier 1 capital ratio, Total capital ratio and net income under the BHC baseline scenario. These line items would allow the Federal Reserve to confirm compliance with the capital plan rule for firms subject to Category IV standards.

The detailed balance sheet information that would continue to be collected on a monthly and quarterly basis from firms subject to Category IV standards on the FR Y–14Q and FR Y–14M is necessary to maintain the integrity of the stress tests, monitor financial stability, and effectively supervise those firms.

Question 1: What are the advantages and disadvantages of requiring firms subject to Category IV standards to continue to provide the Board with forward-looking analysis of income and capital levels under expected and

[9] *See* 12 CFR part 252, subparts E and F.

[10] The analysis should cover an appropriate period (usually a period of at least two years) to capture the relevant risks to a firm. A firm should estimate losses, revenues, expenses, and capital using sound methods that relate macroeconomic and other risk drivers to its estimates.

[11] *See* SR Letter 19–3, Large Financial Institution (LFI) Rating System (Feb. 26, 2019).

[12] In particular, firms subject to Category IV standards would be required to complete the FR Y–14A, Schedule C—Regulatory Capital Instruments, Schedule E—Operational Risk, and the Collection of Supplemental CECL Information.

stressful conditions? What, if any, alternative approaches should the Board consider and why?

Question 2: Are there potential alternatives or improvements to other capital planning requirements for firms subject to Category IV standards that the Board should consider in light of the Board's elimination of the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of company-run stress tests? Provide specific suggestions and rationale.

Question 3: What are the advantages and disadvantages of requiring firms subject to Category IV standards to submit some, but not all, aspects of the Y–14A Schedule A—Summary to the Federal Reserve? For example, should these firms continue to be required to submit top-line items under their BHC stress scenario, such as level of capital, net income or risk-weighted assets, and if so why?

Question 4: What alternatives could the Board use to collect information related to a firm's capital plan and forward-looking projections under a range of conditions?

C. Calculation and Timing of the Stress Capital Buffer Requirement for Firms Subject to Category IV Standards

Firms subject to Category IV standards are currently subject to supervisory stress testing on a two-year cycle. Under the proposal, the portion of the stress capital buffer requirement that is calculated as the decline in the CET1 ratio for such firms would be calculated every other year. During a year in which a firm subject to Category IV standards does not undergo a supervisory stress test, the firm would receive an updated stress capital buffer requirement that reflects the firm's updated planned common stock dividends.

For example, a firm subject to Category IV standards receives a stress capital buffer requirement on June 30, 2022, equal to 3.5 percent and the buffer is composed of a 3.0 percent decline in CET1 ratio in the stress test and 0.5 percent from four quarters of planned dividends as a percent of risk-weighted assets. That requirement would be effective from October 1, 2022, to September 30, 2023. The following year, the firm would provide the Federal Reserve with an updated capital plan by April 5, 2023. If, for example, the firm planned to increase its dividends to equal 0.6 percent of risk-weighted assets, then its new stress capital buffer requirement of 3.6 percent would become effective on October 1, 2023, and would remain effective until September 30, 2024.

A firm subject to Category IV standards may prefer to receive an updated stress capital buffer requirement in a year in which it would not generally be subject to the supervisory stress test. To provide these firms the flexibility to ensure they receive stress capital buffer requirements that are reflective of their risk profiles, the proposal would allow a firm subject to Category IV standards to elect to participate in the supervisory stress test in a year in which the firm would not normally be subject to the supervisory stress test. To ensure the Board is provided sufficient notice that the firm is participating in the supervisory stress test, the firm would need to make its election by December 31 of the year preceding the year in which it seeks to opt in to the supervisory stress test by providing written notice to the Board and appropriate Federal Reserve Bank. Such a firm would be a full participant in that year's supervisory stress test, including disclosure of the firm's supervisory stress test results, and would receive an updated stress capital buffer requirement like all other firms subject to the supervisory stress test.

For purposes of calculating the stress capital buffer requirement in 2021 for a firm subject to Category IV standards that elects to participate in the 2021 supervisory stress test, the proposal includes transitional procedures such that the firm could notify the Board until February 15, 2021. These transitional arrangements would apply only for purposes of the 2021 stress test cycle.

In addition, as under the current capital plan rule, the Board would continue to have the ability to require a firm to resubmit its capital plan if, among other reasons, the Board determines that there has been or will likely be a material change in the firm's risk profile, financial condition, or corporate structure, or if changes to financial market conditions or the macroeconomic outlook require the use of updated scenarios. If a firm resubmits its capital plan, the Board may recalculate its stress capital buffer requirement and may use a new severely adverse scenario. These requirements help ensure that a firm's stress capital buffer requirement remains commensurate with its risk profile.

Question 5: What are the advantages and disadvantages of updating on an annual basis the dividend add-on portion of the stress capital buffer requirements for firms subject to Category IV standards? Should the Board consider a shorter or longer time period for updating the dividend add-on portion of the stress capital buffer requirement, and if so, why?

Question 6: What are the advantages and disadvantages of allowing a firm subject to Category IV standards to receive an updated stress capital buffer requirement in a year in which the firm is not subject to the supervisory stress test if the firm elects to undergo a supervisory stress test, including the proposed method and timing of the election?

Question 7: What are the advantages and disadvantages of requiring a firm subject to Category IV standards to be a full participant (*i.e.,* the Board would disclose the results of its supervisory stress test results for the firm), in that year's supervisory stress test in order to receive an updated stress capital buffer requirement?

Question 8: This proposal includes February 15, 2021 as the deadline for a firm subject to Category IV standards to notify the Board of its intention to participate in the 2021 supervisory stress test. What are the advantages and disadvantages of including February 15, 2021 as the deadline for this notification to participate in the 2021 supervisory stress test for such a firm? What other date(s) or timeline should the Board consider in order to ensure such a firm can elect to participate in the 2021 supervisory stress test? For example, what would be the advantages and disadvantages of including April 5, 2021, the date on which these firms must submit their capital plans to the Federal Reserve, as the deadline for notification to participate in the 2021 supervisory stress test?

D. Changes to Stress Test Rules for Firms Subject to Category I–IV Standards

i. Business Plan Change Assumption

For purposes of the supervisory stress test, the Board does not incorporate the impact of expected changes to a firm's business plan that are likely to have a material impact on the firm's capital adequacy and funding profile (material business plan changes) in balance sheet, risk-weighted asset, and capital projections. In order to ensure alignment in the assumptions in the supervisory and company-run stress tests, the proposal would clarify that the Board and firms would exclude impacts of unconsummated material business plan changes in the supervisory and company-run stress tests conducted pursuant to the Dodd-Frank Act. As this assumption would be reflected in the stress test rules, the proposal would

remove the corresponding section from the Stress Testing Policy Statement.

A firm would continue to be required to include in its capital plan a discussion of any expected changes to the firm's business plan that are likely to have a material impact on the firm's capital adequacy or liquidity. A firm would also continue to be required to incorporate impacts of material business plan changes in projections of income and capital levels under all scenarios required for purposes of capital planning. This requirement would help to ensure that a firm appropriately plans for changes to its business. If a material business plan change resulted in or would result in a material change in a firm's risk profile, the firm would still be required to resubmit its capital plan.

ii. Changes for Savings and Loan Holding Companies

As a part of the tailoring rule, covered savings and loan holding companies were made subject to the Board's supervisory stress test and company-run stress test requirements in the same manner as comparable bank holding companies.[13] Currently, the capital action assumptions in the stress test rules for covered savings and loan holding companies are different than those for comparable bank holding companies because they were not included in the stress capital buffer rule, in which the Board updated the distribution assumptions for bank holding companies. The proposal would amend the stress test rules for covered savings and loan holding companies so the capital distribution assumptions for covered savings and loan holding companies match the assumptions for comparable bank holding companies.

The proposal would also include a change to address an omission in the Board's company-run stress test requirements to ensure that all savings and loan holding companies with more than $250 billion in assets are required to publicly disclose the results of their stress tests, similar to the requirement for bank holding companies. This would ensure the requirements are consistent with the Dodd-Frank Act.

The Board is also considering whether to apply the capital planning and stress capital buffer requirements to large covered savings and loan holding companies that currently apply to large bank holding companies and is posing the following questions for public comment.

Question 9: As outlined in the preamble of the Board's final tailoring rule, large covered savings and loan holding companies engage in many of the same activities and face similar risks as large bank holding companies, including, but not limited to, deposit taking, lending, broker-dealer activities, credit card and margin lending, and certain complex nonbanking activities. The Board's tailoring rule applied the category framework to covered savings and loan holding companies to help identify risks that warrant more sophisticated capital planning, more frequent company-run stress testing, and greater supervisory oversight through supervisory stress testing, to further the safety and soundness of these banking organizations. However, the requirements in the capital plan rule do not currently apply to large covered savings and loan holding companies. What would be the advantages and disadvantages of applying the requirements in the capital plan rule, including the stress capital buffer requirement, to large covered savings and loan holding companies in the same manner as they apply to large bank holding companies? To what extent does the public consider covered savings and loan holding companies to be close substitutes to similarly situated bank holding companies?

Question 10: If the Board were to apply capital planning and stress capital buffer requirements to large covered savings and loan holding, what adjustments, if any, should the Board make to those requirements as compared to the requirements that apply to large bank holding companies and why? For example, should the Board consider any adjustments to the mandatory elements of the capital plan, the calculation of the stress capital buffer requirement, regulatory reporting requirements or any other aspect capital planning and stress capital buffer requirements in light of the risk profile of large covered savings and loan holding companies relative to large bank holding companies?

Question 11: What other approaches to applying capital planning requirements to large covered savings and loan holding companies should the Board consider and why? For example, what would be the advantages and disadvantages of allowing large covered savings and loan holding companies to opt-in to being required to comply with the capital planning and stress capital buffer requirements that currently apply to large bank holding companies?

Question 12: Under the Board's capital plan rule for large bank holding companies, a firm that is subject to the capital plan rule and meets the asset threshold on or before September 30 of a calendar year must comply with the requirements of the rule beginning on January 1 of the next calendar year. Similarly, such a firm that meets the asset threshold after September 30 of a calendar year must comply with the requirements of the rule beginning on January 1 of the second calendar year after the firm meets the asset threshold. What elements of this approach to a transition period are appropriate for applying capital planning requirements to large covered savings and loan holding companies?

iii. Changes to Reporting Requirements Related to Stress Test Rule Changes

The proposal would update the FR Y–14 reporting requirements for firms subject to Category I–IV standards to conform with changes made to the stress test rules. In order to reflect the exclusion of material business plan changes in company-run stress test projections, the proposal would create two sub-schedules for all items on the FR Y–14A, Schedule A—Summary: (1) DFAST, where a firm would not incorporate the effects of business plan changes and (2) CCAR, where a firm would incorporate the effects of business plan changes. Firms would report projections on the DFAST sub-schedule under the scenarios provided by the Federal Reserve, and firms would report projections on the CCAR sub-schedule under expected conditions and under a range of scenarios, including the supervisory severely adverse scenario provided by the Federal Reserve and at least one BHC baseline and one BHC stress scenario. To more accurately reflect the types of firms subject to the stress test reporting requirements, the proposal would also rename the BHC baseline scenario and BHC stress scenario to Firm baseline scenario and Firm stress scenario, respectively.

Firms subject to Category I–III standards would be required to report a version of FR Y–14A, Schedule A.1.a—Income Statement, Schedule A.1.b—Balance Sheet, Schedule A.1.c.1—Standardized RWA, Schedule A.1.d—Capital, Schedule A.2.a—Retail Balance and Loss Projections, Schedule A.3—AFS/HTM Securities, Schedule A.4—Trading, Schedule A.5—Counterparty Credit Risk, Schedule A.6—Operational Risk, and Schedule A.7—Pre-Provision Net Revenue, that incorporates the

[13] A covered savings and loan holding company must have less than 25 percent of its total consolidated assets in insurance underwriting subsidiaries (other than assets associated with insurance underwriting for credit), must not have a top-tier holding company that is an insurance underwriting company, and must derive a majority of its assets or revenues from activities that are financial in nature under section 4(k) of the Bank Holding Company Act. 12 CFR 217.2.

effects of business plan changes, as well as a version of these schedules and items that does not incorporate these effects. For Schedule A.1.d, firms subject to Category I–III standards would no longer report the supervisory baseline scenario on the Capital—CCAR sub-schedule. Firms subject to Category I–IV standards would be required to report a version of FR Y–14A Schedule C that incorporates the effects of material business plan changes and a version that does not incorporate these effects. As described above, firms subject to Category IV standards would not be required to submit the FR Y–14A, Schedule A—Summary. Given the changes made to the FR Y–14A, Schedule A—Summary, firms would no longer be required to submit the supervisory baseline scenario for FR Y–14A, Schedule F—Business Plan Changes.

Question XX: What are the advantages and disadvantages of the Board requiring firms subject to Category IV standards to submit the FR Y–14A, Schedule A—Summary in response to changes based on the macroeconomic outlook or based on the firm's risk profile, financial condition or corporate structure?

E. Definition of Common Stock Dividend in Capital Plan Rule

A component of a firm's stress capital buffer requirement is the dividend add-on, which is based on planned dividends during projected quarters four through seven of the planning horizon. As noted above, the dividend add-on promotes forward-looking dividend planning and mitigates the procyclicality of the Board's stress testing framework. The capital plan rule does not define common stock dividends. However, the FR Y–14A defines dividends by referencing the definition of dividend in the Glossary to the FR Y–9C instructions. That definition provides, among other things, that cash dividends are ''payments of cash to shareholders in proportion to the number of shares they own.'' Using the definition of dividends on the FR Y–9C, in 2019 dividends as a share of risk-weighted assets was around 50 basis points.

The Board has observed different practices regarding the classification of dividends and share repurchases. For example, certain U.S. intermediate holding companies of foreign banking organizations have classified distributions to their parent companies as dividends, while other U.S. intermediate holding companies have classified similar distributions as non-dividend payouts. Decisions by firm regarding classifications may depend, among other things, whether the distribution is paid out of the firm's retained earnings.

The Board is therefore seeking comment on, but not proposing, a definition for common stock dividends in the capital plan rule. The definition of common stock dividend could be aligned with the definition on the FR Y–9C and could include payments of cash to parent organizations irrespective of whether the amount paid is debited from the firm's retained earnings. For example, a definition of common stock dividend could be any payment of cash to shareholders in proportion to the number of shares they own.

Question 13: What would be the advantages and disadvantages of including a definition of common stock dividends in the capital plan rule? How should such a definition interact with the definition of dividends in the Board's rules and regulatory reports, including the FR Y–9C and the FR Y–14A/Q/M? What would be the advantages and disadvantages of aligning the definition of dividends across the Board's rules and regulatory reports? Please include a discussion of the materiality of including this definition.

Question 14: What are the advantages and disadvantages of the definition discussed above? What adjustments should the Board consider to this definition and why? Are there any special considerations the Board should consider with regards to U.S. intermediate holding companies?

F. Impact Analysis

The changes in the proposal would not affect the calculation of capital requirements. The proposal would not change the calculation of capital requirements, including the stress capital buffer requirement, for firms subject to Category IV standards. The regulatory reporting aspects of the proposal would introduce some additional compliance burden on firms subject to Category I through III standards, while significantly reducing compliance burden on firms subject to Category IV standards.

II. Request for Comment on Board Guidance on Capital Planning

Sufficient capital resources are central to a firm's ability to absorb unexpected losses and continue to lend to creditworthy businesses and consumers. Therefore, a firm's processes for managing and allocating its capital resources are critical to its financial strength and resiliency, as well as to the stability and effective functioning of the U.S. financial system. Over the past decades, the Board has issued guidance related to its supervisory expectations for firms' capital planning. The Board has tailored expectations for sound capital planning depending on the size, scope of operations, activities, and systemic importance of a firm.

The Board is requesting comment on all aspects of its guidance on capital planning for firms of all sizes (as delineated below), consistent with its ongoing practice of reviewing its policies to ensure that they are having their intended effect. Certain aspects of the guidance have not been updated since the 2007–2008 financial crisis. The revisions made to the Board's regulations in the recent tailoring and stress capital buffer rules and experiences with capital planning during the Coronavirus Disease 2019 event (COVID event) also motivate seeking public input at this time.

The Board's key capital planning guidance includes supervision and regulation (SR) letters, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms,'' [14] ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms,'' [15] ''Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies,'' [16] and the ''Policy Statement on the Payment of Cash Dividends.'' [17] The Board also encourages feedback on any other aspects of its guidance that relate to capital planning.

Question 15: What if any changes should the Board consider with respect to the scope of application of its existing capital planning guidance and why? What if any considerations regarding firms' risk profiles should be factored

[14] SR letter 15–18, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms,'' December 18, 2015, See *https://www.federalreserve.gov/supervisionreg/srletters/sr1518.htm.*

[15] SR letter 15–19, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms,'' December 18, 2015, See *https://www.federalreserve.gov/supervisionreg/srletters/sr1519.htm.*

[16] SR letter 09–4, ''Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies'', February 24, 2009, See *https://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm.*

[17] ''UNSOUND BANKING PRACTICES—Cash Dividends Not Fully Covered by Earnings'' November 14, 1985. See *https://www.federalreserve.gov/boarddocs/srletters/2009/sr0904a2.pdf.*

into the applicability of capital planning guidance and why? Factoring in the applicability of the Board's regulations, what if any aspects of the Board's capital planning guidance should be changed or tailored differently based on firms' risk profiles and why?

Question 16: The Board is interested in comment on whether changes are appropriate to its supervisory guidance on capital planning, in light of experience with the guidance and factors such as the recent tailoring and stress capital buffer rules and other applicable regulatory requirements. Please describe appropriate changes and the rationale behind them.

Question 17: How should existing guidance on capital planning be adapted, if at all, to reflect times of heightened and prolonged uncertainty? For example, how has the COVID event influenced firms' capital planning and loss estimation processes? How should these types of adjustments be reflected in the Board's guidance on capital planning?

Question 18: How should the Board weigh the potential benefits of revising its capital planning guidance against the potential burdens, given the current economic environment? How could any such burdens be mitigated?

Question 19: How well does the existing guidance on capital planning reflect sound practices for managing risks across firms of various risk profiles and promote safety and soundness? With a goal of balancing clarity and flexibility, how could the guidance be improved in its application to firms with differing risk profiles? What aspects of industry practice or other developments should be considered in any potential updates to this guidance, and how?

III. Administrative Law Matters

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule would revise collection of information requirements subject to the PRA. The Board proposes to revise the FR Y–14, FR LL, and the FR YY to reflect the changes proposed in the proposed rule. The OMB control numbers are 7100–0341, 7100–NEW, and 7100–0350.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comment will become a matter of public record. Comments on aspects of this proposal that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Agency Desk Officer.

Proposed Revisions, With Extension for Three Years, of the Following Information Collections

(1) *Report title:* Capital Assessments and Stress Testing Reports.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Frequency: Annually, quarterly, and monthly.

Respondents: These collections of information are applicable to bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), and covered savings and loan holding companies (SLHCs) [18] with $100 billion or more in total consolidated assets, as based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128); or (ii) if the firm has not filed an FR Y–9C for each of the most recent four quarters, then the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs. Reporting is required as of the first day of the quarter immediately following the quarter in which the respondent meets this asset threshold, unless otherwise directed by the Board.

Estimated number of respondents: FR Y–14A/Q: 36; FR Y–14M: 34.[19]

Estimated average hours per response: FR Y–14A: 1,250 hours; FR Y–14Q: 2,143 hours; FR Y–14M: 1,072 hours; FR Y–14 On-going Automation Revisions: 480 hours; FR Y–14 Attestation On-going Attestation: 2,560 hours.

Estimated annual burden hours: FR Y–14A: 45,000 hours; FR Y–14Q: 308,592 hours; FR Y–14M: 437,376 hours; FR Y–14 On-going Automation Revisions: 17,280 hours; FR Y–14 Attestation On-going Attestation: 33,280 hours.

General description of report: This family of information collections is composed of the following three reports:

- The annual [20] FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[21]
- The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, trading assets, and PPNR for the reporting period.

[18] Covered SLHCs are those which are not substantially engaged in insurance or commercial activities. For more information, see the definition of ''covered savings and loan holding company'' provided in 12 CFR 217.2 and 12 CFR 238.2(ee). SLHCs with $100 billion or more in total consolidated assets become members of the FR Y–14Q and FR Y–14M panels effective June 30, 2020, and the FR Y–14A panel effective December 31, 2020. *See* 84 FR 59032 (November 1, 2019).

[19] The estimated number of respondents for the FR Y–14M is lower than for the FR Y–14Q and FR Y–14A because, in recent years, certain respondents to the FR Y–14A and FR Y–14Q have not met the materiality thresholds to report the FR Y–14M due to their lack of mortgage and credit activities. The Board expects this situation to continue for the foreseeable future.

[20] In certain circumstances, a BHC or IHC may be required to re-submit its capital plan. See 12 CFR 225.8(e)(4). Firms that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[21] On October 10, 2019, the Board issued a final rule that eliminated the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of a company-run stress test. See 84 FR 59032 (Nov. 1, 2019). That final rule maintained the existing FR Y–14A/Q/M substantive reporting requirements for these firms in order to provide the Board with the data it needs to conduct supervisory stress testing and inform the Board's ongoing monitoring and supervision of its supervised firms. As noted in the final rule, the Board intends to provide greater flexibility to banking organizations subject to Category IV standards in developing their annual capital plans and consider further change to the FR Y–14A/Q/M forms as part of a separate proposal. *See* 84 FR 59032, 59063.

• The monthly FR Y–14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

The data collected through the FR Y–14A/Q/M reports provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The reports are used to support the Board's annual Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act Stress Test (DFAST) exercises, which complement other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Respondent firms are currently required to complete and submit up to 17 filings each year: One annual FR Y–14A filing, four quarterly FR Y–14Q filings, and 12 monthly FR Y–14M filings. Compliance with the information collection is mandatory.

Current Actions: As previously described in this proposal, the Board is proposing to make several FR Y–14 revisions. Certain revisions would only be applicable to firms subject to Category IV or Category I–III standards, while other revisions would be applicable to all BHCs and IHCs. All revisions are proposed to be effective for data as-of December 31, 2020.

Firms Subject to Category IV Standards

As a result of the proposed changes to company-run stress testing requirements, the Board is proposing that firms subject to Category IV standards would no longer be required to report FR Y–14A Schedule A—Summary, Schedule B—Scenario, Schedule F—Business Plan Changes, and Appendix A—Supporting Documentation, which are used to report a firm's company-run stress test results. However, firms subject to Category IV standards would be required to complete all remaining FR Y–14A schedules, as they are necessary for the Board to run its supervisory stress test. The Board believes that the detailed balance sheet information that would continue to be collected on a monthly and quarterly basis from firms subject to Category IV standards on the FR Y–14Q and FR Y–14M is crucial for maintaining the integrity of the stress tests, monitoring financial stability, and supervising those firms.

Firms Subject to Category I–III Standards

As previously outlined, firms subject to Category I–III standards would continue to report the FR Y–14A Schedule A—Summary. To conform the FR Y–14 reports with the stress test assumption changes made per the stress capital buffer, the Board is proposing to create two sub-schedules for all items on the FR Y–14A, Schedule A: (1) DFAST, where a firm would not incorporate the effects of business plan changes and (2) CCAR, where a firm would incorporate the effects of business plan changes. Specifically, firms subject to Category I–III standards would be required to report a version of FR Y–14A, Schedule A.1.a—Income Statement, Schedule A.1.b—Balance Sheet, Schedule A.1.c.1—Standardized RWA, Schedule A.1.d—Capital, Schedule A.2.a—Retail Balance and Loss, Schedule A.3—AFS/HTM Securities, Schedule A.4—Trading, Schedule A.5—Counterparty Credit Risk, Schedule A.6—Operational Risk, and Loss Projections, and Schedule A.7—Pre-Provision Net Revenue, that incorporates the effects of business plan changes, as well as a version of these schedules and items that does not incorporate these effects. For Schedule A.1.d, firms would continue to report two sub-schedules with different capital actions, along with the income and balance sheet information reported in the appropriate sub-schedule. In addition, firms would only be required to report FR Y–14A, Schedule F under the Firm baseline and supervisory severely adverse scenarios.

All BHCs and IHCs

All BHCs and IHCs would still be required to report FR Y–14A, Schedule C—Regulatory Capital Instruments, and the stress test assumption changes made per the stress capital buffer rule create a need for firms to provide certain data excluding the impact of business plan changes. As a result, the Board is proposing to create two sub-schedules for all items on the FR Y–14A, Schedule C: (1) SCB, where a firm would not incorporate the effects of business plan changes and (2) CCAR, where a firm would incorporate the effects of business plan changes. Specifically, all BHCs and IHCs would be required to report a version of FR Y–14A, Schedule C, that incorporates the effects of business plan changes, as well as a version of this schedule and items that does not incorporate these effects.

In order to be able to assess whether a firm's planned capital distributions included in its capital plan would be consistent with any effective capital distribution limitations that would apply under the firm's baseline projections, as required by the capital plan rule, the Board is also proposing to add four items to FR Y–14A, Schedule C. These items would capture baseline projections of a firm's common equity tier 1 capital ratio, tier 1 capital ratio, total capital ratio, and net income.

Other Revisions

As previously mentioned, the Board is proposing to replace the current definition of ''large and noncomplex bank holding company'' with the definition of a firm subject to Category IV standards. Therefore, the Board is proposing to make this change across the FR Y–14A/Q/M reports. In addition, to more accurately reflect the types of firms subject to the stress test reporting requirements, the Board is proposing to rename the ''BHC baseline scenario'' and ''BHC stress scenario'' to ''Firm baseline scenario'' and ''Firm stress scenario,'' respectively.

(2) *Report title:* Reporting and Disclosure Requirements Associated with Regulation LL.

Agency form number: FR LL.

OMB control number: 7100–NEW.

Frequency: Biennial.

Affected Public: Businesses or other for-profit.

Respondents: Savings and loan holding companies.

Estimated number of respondents: 1.

Estimated average hours per response: Reporting § 238.162(b)(1)(ii)—80; Disclosure section 238.146 (initial setup)—150; Disclosure § 238.146—60.

Estimated annual burden hours: Reporting § 238.162(b)(1)(ii)—40; Disclosure § 238.146 (initial setup)—75; Disclosure § 238.146—30.

Legal authorization and confidentiality: This information collection is authorized by section 10 of the Home Owners' Loan Act (HOLA) and section 165(i)(2) of the Dodd-Frank Act. The obligation of covered institutions to report this information is mandatory. This information would be disclosed publicly and, as a result, no issue of confidentiality is raised.

Current Actions: The proposed rule includes amendments to § 238.146 of Regulation LL meant to ensure that certain savings and loan holding companies are required to publicly

disclose their stress tests results. Under the proposal, a covered savings and loan holding company that is subject to a supervisory stress test under § 238.132 of Regulation LL would be required to publicly disclose a summary of the results of the stress test required under § 238.143 of Regulation LL within the period that is 15 calendar days after the Board publicly discloses the results of its supervisory stress test of the covered company pursuant to § 238.134 of Regulation LL, unless that time is extended by the Board in writing, while a covered savings and loan holding company that is not subject to a supervisory stress test under § 238.132 of Regulation LL would be required to publicly disclose a summary of the results of the stress test required under § 238.143 of Regulation LL in the period beginning on June 15 and ending on June 30 in the year in which the stress test is conducted, unless that time is extended by the Board in writing.

(3) *Report title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (Enhanced Prudential Standards).

Agency Form Number: FR YY.

OMB Control Number: 7100–0350.

Frequency: Annual, semiannual, quarterly.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, U.S. bank holding companies, nonbank financial companies, foreign banking organizations, U.S. intermediate holding companies, foreign saving and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Estimated number of respondents: 23 U.S. bank holding companies with total consolidated assets of $100 billion or more, 4 U.S. bank holding companies with total consolidated assets of $50 billion or more but less than $100 billion, 1 state member bank with total consolidated assets over $250 billion, 11 U.S. intermediate holding companies with $100 billion or more in total assets, 23 foreign banking organizations with total consolidated assets of more than $50 billion but less than $100 billion; 23 foreign banking organizations with total consolidated assets of $100 billion or more but combined U.S. operations of at least $50 billion but less than $100 billion; 17 foreign banking organizations with total consolidated assets of $100 billion or more and combined U.S. operations of $100 billion or more.

Current estimated annual burden: 41,619 hours.

Proposed revisions estimated annual burden: (13,868) hours.

Total estimated annual burden: 27,751 hours.

General description of report: Section 165 of the Dodd-Frank Act, as amended by EGRRCPA, requires the Board to implement enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $250 billion or more, and provides the Board with discretion to apply enhanced prudential standards to certain bank holding companies and foreign banking organizations with $100 billion or more, but less than $250 billion, in total consolidated assets. The enhanced prudential standards include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), stress test requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.

Current Actions: As described above, the Board proposes to allow a firm subject to Category IV standards to elect to participate in the supervisory stress test in a year in which the firm would not normally be subject to the supervisory stress test. To ensure the Board is provided sufficient notice that the firm is participating in the supervisory stress test, the firm would need to make its election by December 31 of the year preceding the year in which it seeks to opt in to the supervisory stress test by providing written notice to the Board and appropriate Federal Reserve Bank. For purposes of calculating the stress capital buffer requirement in 2021 for a firm subject to Category IV standards that elects to participate in the 2021 supervisory stress test, the proposal includes transitional procedures such that the firm could notify the Board after December 31, 2020, but before the Board publishes the supervisory scenarios.

B. Regulatory Flexibility Act

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[22] In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered. The proposal would also make corresponding changes to the Board's reporting forms.

As discussed in detail above, the proposed rule would amend the capital rule, capital plan rule, stress testing rules, and the Stress Testing Policy Statement. Under the proposed rule, the Board would remove certain capital plan requirements to remove company-run stress test requirements. In addition, in order to align the stress capital buffer requirements with the tailoring rule changes, the proposal would update the portion of the stress capital buffer that is calculated as the decline in the CET1 ratio every other year for firms subject to Category IV standards. The proposal would include changes to Board's supervisory stress test and the company-run stress test rules. The proposal would clarify the assumptions related to business plan changes, introduce a revision to the capital action assumptions and include a technical

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

change to ensure certain savings and loan holding companies are required to publicly disclose their stress tests results.

The Board has broad authority under the International Lending Supervision Act (ILSA) [23] and the PCA provisions of the Federal Deposit Insurance Act [24] to establish regulatory capital requirements for the institutions it regulates. For example, ILSA directs each Federal banking agency to cause banking institutions to achieve and maintain adequate capital by establishing minimum capital requirements as well as by other means that the agency deems appropriate.[25] The PCA provisions of the Federal Deposit Insurance Act direct each Federal banking agency to specify, for each relevant capital measure, the level at which an IDI subsidiary is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.[26] In addition, the Board has broad authority to establish regulatory capital standards for bank holding companies under the Bank Holding Company Act and the Dodd-Frank Reform and Consumer Protection Act (Dodd-Frank Act).[27]

The proposed rule would apply only to bank holding companies, intermediate holding companies and savings and loan holding companies with total consolidated assets of at least $100 billion in total consolidated assets. The proposed rule would not apply to any small entities. Further, the proposal would make changes to the projected reporting, recordkeeping, and other compliance requirements of the rule by proposing to collect information from firms subject to the capital plan rule. These changes would not impact small entities. In addition, the Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed changes to the capital rule, capital plan rule, and stress testing rules. Therefore, the Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

C. Solicitation of Comments of Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

For example:

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

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Capital planning, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

12 CFR Part 238

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

12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Capital planning, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

■ 2. Amend § 225.8 by:
■ a. Removing all references to ''BHC stress scenario'' and ''BHS stress scenario(s)'' and add in their place ''Firm stress scenario'' and ''Firm stress scenario(s),'' respectively;
■ b. Removing all references to ''BHC baseline scenario'' and add in their place ''Firm baseline scenario'';
■ c. Revising paragraphs (d)(10) through (15), (e)(2)(i)(A), and (e)(4)(ii) and (iii);
■ d. Removing paragraphs (e)(4)(iv);
■ e. Revising paragraph (f)(1);
■ f. Adding paragraph (f)(4);
■ g. Revising paragraphs (h)(2) through (5), (i), (j), and (k); and
■ h. Removing paragraph (l).

The revisions and addition read as follows:

§ 225.8 Capital planning and stress capital buffer requirement.

* * * * *

(d) * * *

(10) *Category IV bank holding company* means any bank holding company or U.S. intermediate holding company subject to this section that, as of December 31 of the prior capital plan cycle, is a Category IV banking organization pursuant to 12 CFR 252.5.

(11) *Common equity tier 1 capital* has the same meaning as under 12 CFR part 217.

(12) *Effective capital distribution limitations* means any limitations on capital distributions established by the Board by order or regulation, including pursuant to 12 CFR 217.11, 225.4, 252.63, 252.165, and 263.202, provided that, for any limitations based on risk-weighted assets, such limitations must be calculated using the standardized approach, as set forth in 12 CFR part 217, subpart D.

(13) *Final planned capital distributions* means the planned capital distributions included in a capital plan that include the adjustments made pursuant to paragraph (h) of this section, if any.

(14) *Global systemically important BHC* means a bank holding company identified as a global systemically important BHC under 12 CFR 217.402.

[23] 12 U.S.C. 3901–3911.

[24] 12 U.S.C. 1831o.

[25] 12 U.S.C. 3907(a)(1).

[26] 12 U.S.C. 1831o(c)(2).

[27] *See, e.g.,* sections 165 and 171 of the Dodd-Frank Act (12 U.S.C. 5365 and 12 U.S.C. 5371). Public Law 111–203, 124 Stat. 1376 (2010).

(15) *GSIB surcharge* has the same meaning as under 12 CFR 217.403.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the bank holding company, over the planning horizon under a range of scenarios, including:

(*1*) If the bank holding company is a Category IV bank holding company, the Firm baseline scenario and at least one Firm stress scenario, as well as any additional scenarios, based on financial conditions or the macroeconomic outlook, or based on the bank holding company's financial condition, size, complexity, risk profile, or activities, or risks to the U.S. economy, that the Federal Reserve may provide the bank holding company after giving notice to the bank holding company; or

(*2*) If the bank holding company is not a Category IV bank holding company, any scenarios provided by the Federal Reserve, the Firm baseline scenario, and at least one Firm stress scenario;

* * * * *

(4) * * *

(ii) The Board, or the appropriate Reserve Bank with concurrence of the Board, may extend the 30-day period in paragraph (e)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as the Board or the appropriate Reserve Bank, with concurrence of the Board, determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, a bank holding company may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

* * * * *

(f) *Calculation of the stress capital buffer requirement*—(1) *General.* The Board will determine the stress capital buffer requirement that applies under 12 CFR 217.11 pursuant to paragraph (f) of this section. For each bank holding company that is not a Category IV bank holding company, the Board will calculate the bank holding company's stress capital buffer requirement annually. For each Category IV bank holding company, the Board will calculate the bank holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an even number, and will adjust the bank holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an odd number. Notwithstanding the previous sentence, the Board will calculate the stress capital buffer requirement of a Category IV bank holding company in a year ending in an odd number with respect to which that company makes an election pursuant to 12 CFR 252.44(d)(2)(ii).

* * * * *

(4) *Adjustment of stress capital buffer requirement.* In each calendar year in which the Board does not calculate a Category IV bank holding company's stress capital buffer requirement pursuant to paragraph (f)(1) of this section, the Board will adjust the Category IV bank holding company's stress capital buffer requirement to be equal to the result of the calculation set forth in paragraph (f)(2) of this section, using the same values that were used to calculate the stress capital buffer requirement most recently provided to the bank holding company, except that the value used in paragraph (f)(2)(i)(C)(*1*) of this section will be equal to the bank holding company's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon as set forth in the capital plan submitted by the bank holding company in the calendar year in which the Board adjusts the bank holding company's stress capital buffer requirement.

* * * * *

(h) * * *

(2) *Response to notice*—(i) *Request for reconsideration of stress capital buffer requirement.* A bank holding company may request reconsideration of a stress capital buffer requirement provided under paragraph (h)(1) of this section. To request reconsideration of a stress capital buffer requirement, a bank holding company must submit to the Board a request pursuant to paragraph (i) of this section.

(ii) *Adjustments to planned capital distributions.* Within two business days of receipt of notice of a stress capital buffer requirement under paragraph (h)(1) or (i)(5) of this section, as applicable, a bank holding company must:

(A) Determine whether the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Firm baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; and

(*1*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Firm baseline scenario would not be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the bank holding company must adjust its planned capital distributions such that its planned capital distributions would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; or

(*2*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Firm baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the bank holding company may adjust its planned capital distributions. A bank holding company may not adjust its planned capital distributions to be inconsistent with the effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable; and

(B) Notify the Board of any adjustments made to planned capital distributions for the fourth through seventh quarters of the planning horizon under the Firm baseline scenario.

(3) *Final planned capital distributions.* The Board will consider the planned capital distributions, including any adjustments made pursuant to paragraph (h)(2)(ii) of this section, to be the bank holding company's final planned capital distributions on the later of:

(i) The expiration of the time for requesting reconsideration under paragraph (i) of this section; and

(ii) The expiration of the time for adjusting planned capital distributions pursuant to paragraph (h)(2)(ii) of this section.

(4) *Effective date of final stress capital buffer requirement.* (i) The Board will provide a bank holding company with its final stress capital buffer requirement

and confirmation of the bank holding company's final planned capital distributions by August 31 of the calendar year that a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section, unless otherwise determined by the Board. A stress capital buffer requirement will not be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704 during the pendency of a request for reconsideration made pursuant to paragraph (i) of this section or before the time for requesting reconsideration has expired.

(ii) Unless otherwise determined by the Board, a bank holding company's final planned capital distributions and final stress capital buffer requirement shall:

(A) Be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section; and

(B) Remain in effect until superseded.

(5) *Publication.* With respect to any bank holding company subject to this section, the Board may disclose publicly any or all of the following:

(i) The stress capital buffer requirement provided to a bank holding company under paragraph (h)(1) or (i)(5) of this section;

(ii) Adjustments made pursuant to paragraph (h)(2)(ii);

(iii) A summary of the results of the supervisory stress test; and

(iv) Other information.

(i) *Administrative remedies; request for reconsideration.* The following requirements and procedures apply to any request under this paragraph (i):

(1) *General.* To request reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, a bank holding company must submit a written request for reconsideration.

(2) *Timing of request.* A request for reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, must be received within 15 calendar days of receipt of a notice of a bank holding company's stress capital buffer requirement.

(3) *Contents of request.* (i) A request for reconsideration must include a detailed explanation of why reconsideration should be granted (that is, why a stress capital buffer requirement should be reconsidered). With respect to any information that was not previously provided to the Federal Reserve in the bank holding company's capital plan, the request should include an explanation of why the information should be considered.

(ii) A request for reconsideration may include a request for an informal hearing on the bank holding company's request for reconsideration.

(4) *Hearing.* (i) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(ii) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(5) *Response to request.* Within 30 calendar days of receipt of the bank holding company's request for reconsideration of its stress capital buffer requirement submitted under paragraph (i)(2) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (i)(4) of this section, the Board will notify the company of its decision to affirm or modify the bank holding company's stress capital buffer requirement, provided that the Board may extend this period upon notice to the bank holding company.

(6) *Distributions during the pendency of a request for reconsideration.* During the pendency of the Board's decision under paragraph (i)(5) of this section, the bank holding company may make capital distributions that are consistent with effective distribution limitations, unless prior approval is required under paragraph (j)(1) of this section.

(j) *Approval requirements for certain capital actions*—(1) *Circumstances requiring approval—resubmission of a capital plan.* Unless it receives prior approval pursuant to paragraph (j)(3) of this section, a bank holding company may not make a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) if the capital distribution would occur after the occurrence of an event requiring resubmission under paragraph (e)(4)(i)(A) or (B) of this section.

(2) *Contents of request.* A request for a capital distribution under this section must contain the following information:

(i) The bank holding company's capital plan or a discussion of changes to the bank holding company's capital plan since it was last submitted to the Federal Reserve;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the bank holding company's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data).

(3) *Approval of certain capital distributions.* (i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will act on a request for prior approval of a capital distribution within 30 calendar days after the receipt of all the information required under paragraph (j)(2) of this section.

(ii) In acting on a request for prior approval of a capital distribution, the Board, or appropriate Reserve Bank with concurrence of the Board, will apply the considerations and principles in paragraph (g) of this section, as appropriate. In addition, the Board, or the appropriate Reserve Bank with concurrence of the Board, may disapprove the transaction if the bank holding company does not provide all of the information required to be submitted under paragraph (j)(2) of this section.

(4) *Disapproval and hearing.* (i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by the Board, the bank holding company may submit a written request for a hearing.

(ii) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact. An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(iii) Written notice of the final decision of the Board shall be given to the bank holding company within 60 calendar days of the conclusion of any informal hearing ordered by the Board, provided that the Board may extend this period upon notice to the requesting party.

(iv) While the Board's decision is pending and until such time as the Board, or the appropriate Reserve Bank with concurrence of the Board, approves the capital distribution at issue, the bank holding company may not make such capital distribution.

(k) *Post notice requirement.* A bank holding company must notify the Board and the appropriate Reserve Bank

within 15 days of making a capital distribution if:

(1) The capital distribution was approved pursuant to paragraph (j)(3) of this section; or

(2) The dollar amount of the capital distribution will exceed the dollar amount of the bank holding company's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 3. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 5365; 1813, 1817, 1829e, 1831i, 1972, 15 U.S.C. 78 *l.*

Subpart O—Supervisory Stress Test Requirements for Covered Savings and Loan Holding Companies

■ 4. In § 238.132, add paragraphs (a)(4) and (d) to read as follows:

§ 238.132 Analysis conducted by the Board.

(a) * * *

(4) In conducting the analysis, the Board will not incorporate changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile in its projections of losses, net income, pro forma capital levels, and capital ratios.

* * * * *

(d) *Capital action assumptions.* In conducting a stress test under this section, the Board will make the following assumptions regarding a covered company's capital actions over the planning horizon:

(1) The covered company will not pay any dividends on any instruments that qualify as common equity tier 1 capital;

(2) The covered company will make payments on instruments that qualify as additional tier 1 capital or tier 2 capital equal to the stated dividend, interest, or principal due on such instrument;

(3) The covered company will not make a redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio; and

(4) The covered company will not make any issuances of common stock or preferred stock.

Subpart P—Company-Run Stress Test Requirements for Savings and Loan Holding Companies

■ 5. Amend § 238.144 by revising paragraphs (a)(2) and (b)(1) and (2) and adding paragraphs (b)(3) and (4) to read as follows:

§ 238.144 Methodologies and practices.

(a) * * *

(2) The potential impact on pro forma regulatory capital levels and pro forma capital ratios (including regulatory capital ratios and any other capital ratios specified by the Board), and in so doing must:

(i) Incorporate the effects of any capital actions over the planning horizon and maintenance of an allowance for credit losses appropriate for credit exposures throughout the planning horizon; and

(ii) Exclude the impacts of changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile.

(b) * * *

(1) The covered company will not pay any dividends on any instruments that qualify as common equity tier 1 capital;

(2) The covered company will make payments on instruments that qualify as additional tier 1 capital or tier 2 capital equal to the stated dividend, interest, or principal due on such instrument;

(3) The covered company will not make a redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio; and

(4) The covered company will not make any issuances of common stock or preferred stock.

* * * * *

■ 6. In § 238.146, revise paragraph (a)(1) to read as follows:

§ 238.146 Disclosure of stress test results.

(a) * * *

(1) *In general.* (i) A covered company that is subject to a supervisory stress test under § 238.132 must publicly disclose a summary of the results of the stress test required under § 238.143 within the period that is 15 calendar days after the Board publicly discloses the results of its supervisory stress test of the covered company pursuant to § 238.134, unless that time is extended by the Board in writing; and

(ii) A covered company that is not subject to a supervisory stress test under § 238.132 must publicly disclose a summary of the results of the stress test required under § 238.143 in the period beginning on June 15 and ending on June 30 in the year in which the stress test is conducted, unless that time is extended by the Board in writing.

* * * * *

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 7. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart E—Supervisory Stress Test Requirements for Certain U.S. Banking Organizations With $100 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

■ 8. In § 252.44, revise paragraphs (a)(3) and (d) to read as follows:

§ 252.44 Analysis conducted by the Board.

(a) * * *

(3) In conducting the analysis, the Board will not incorporate changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile in its projections of losses, net income, pro forma capital levels, and capital ratios.

* * * * *

(d) *Frequency of analysis conducted by the Board*—(1) *General.* Except as provided in paragraph (d)(2) of this section, the Board will conduct its analysis of a covered company according to the frequency in Table 1 to this paragraph (d)(1).

TABLE 1 TO PARAGRAPH (g)(1)

If the covered company is a	Then the Board will conduct its analysis
Global systemically important BHC	Annually.
Category II bank holding company	Annually.
Category II U.S. intermediate holding company	Annually.
Category III bank holding company	Annually.
Category III U.S. intermediate holding company	Annually.
Category IV bank holding company	Biennially, occurring in each year ending in an even number.

TABLE 1 TO PARAGRAPH (g)(1)—Continued

If the covered company is a	Then the Board will conduct its analysis
Category IV U.S. intermediate holding company	Biennially, occurring in each year ending in an even number.
Nonbank financial company supervised by the Board	Annually.

(2) *Change in frequency.* (i) The Board may conduct a stress test of a covered company on a more or less frequent basis than would be required under paragraph (d)(1) of this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(ii) A Category IV bank holding company or Category IV U.S. intermediate holding company may elect to have the Board conduct a stress test with respect to the company in a year ending in an odd number by providing notice to the Board by December 31 of the preceding year (ending in an even number). Notwithstanding the previous sentence, such a company may elect to have the Board conduct a stress test with respect to the company in the year 2021 by providing notice to the Board by February 15, 2021.

(3) *Notice and response*—(i) *Notification of change in frequency.* If the Board determines to change the frequency of the stress test under paragraph (d)(2)(i) of this section, the Board will notify the company in writing and provide a discussion of the basis for its determination.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under paragraph (d)(3)(i) of this section, a covered company may request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (d)(1) of this section. A covered company's request for reconsideration must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

Subpart F—Company-Run Stress Test Requirements for Certain U.S. Bank Holding Companies and Nonbank Financial Companies Supervised by the Board

■ 9. In § 252.54, revise paragraph (b)(2)(i)(B) to read as follows:

§ 252.54 Stress test.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) Is not a Category IV bank holding company as the term is used in 12 CFR 225.8.

* * * * *

■ 10. In § 252.56, revise paragraph (a)(2) to read as follows:

§ 252.56 Methodologies and practices.

(a) * * *

(2) The potential impact on the regulatory capital levels and ratios applicable to the covered bank, and any other capital ratios specified by the Board, and in doing so must:

(i) Incorporate the effects of any capital action over the planning horizon and maintenance of an allowance for loan losses or adjusted allowance for credit losses, as appropriate, for credit exposures throughout the planning horizon; and

(ii) Exclude the impacts of changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile.

* * * * *

■ 11. In § 252.58, revise paragraph (a)(1) to read as follows:

§ 252.58 Disclosure of stress test results.

(a) * * *

(1) *In general.* A covered company must publicly disclose a summary of the results of the stress test required under § 252.54 within the period that is 15 calendar days after the Board publicly discloses the results of its supervisory stress test of the covered company pursuant to § 252.46(b), unless that time is extended by the Board in writing.

* * * * *

Appendix B to Part 252—[Amended]

■ 12. Amend appendix B to part 252 by removing and reserving section 2.6.

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

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2020–22166 Filed 10–6–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0904; Product Identifier 2019–SW–041–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Helicopters Model EC225LP helicopters. This proposed AD would require various inspections of the left-hand side (LH) engine fuel supply (fuel supply) hose and depending on the inspection results, removing from service or reinstalling the hose. This proposed AD would also prohibit installing any LH fuel supply hose unless it is installed by following the service information. This proposed AD was prompted by a report of an incorrect installation of the LH fuel supply hose causing restricted fuel flow to the LH engine. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 23, 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–2020–0904; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: James Blyn, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *james.blyn@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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 proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

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 proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

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 James Blyn, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *james.blyn@faa.gov.*

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2019–0092, dated April 26, 2019 (EASA AD 2019–0092), to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter) Model EC 225 LP helicopters, all serial numbers. EASA advises that an occurrence was reported where during an in-flight single engine power check, the LH side engine experienced a power loss. EASA states that a subsequent investigation determined that the fuel flow to the affected engine was restricted by a twisted fuel supply hose. EASA states this condition if not detected and corrected could lead to a decrease of the LH engine power when accelerating to the power setting corresponding to One Engine Inoperative power, and subsequent reduced control of the helicopter. Accordingly, the EASA AD requires a one-time visual inspection of the fuel supply hose and depending on the inspection results, removing from service or replacing the affected part. EASA also introduces re-installation requirements for a fuel supply hose that is being replaced or reinstalled.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin No. EC225–71A019, Revision 1, dated February 28, 2019, which specifies procedures for removing the fuel supply hose from the LH power plant, visually inspecting the fuel supply hose for twisting, and depending on inspection results, performing an endoscope inspection on the inside of the hose. This service information also specifies procedures required to install a serviceable fuel supply hose.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements

This proposed AD would require compliance with certain procedures described in the manufacturer's service bulletin. For helicopters delivered to the first operator before November 30, 2018, and for helicopters delivered to the first operator on or after November 30, 2018 that have had the LH fuel supply hose replaced or reinstalled before May 10, 2019, this proposed AD would require visually inspecting the LH fuel supply hose for twisting, and if needed, borescope inspecting the entire length of the inside of the fuel supply hose for twisting and depending on the inspection results, reinstalling or removing the fuel supply hose from service. Additionally, this proposed AD would prohibit installing a certain part-numbered LH fuel supply hose on any helicopter unless that LH fuel supply hose is installed by following certain procedures described in the manufacturer's service bulletin.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires compliance within 110 flight hours or 6 months, whichever occurs first, while this proposed AD would require compliance within 110 hours time-in-service. The EASA AD requires reporting information to Airbus Helicopters if the LH fuel supply hose is twisted on the inside, while this proposed AD would not.

Interim Action

The FAA considers this proposed AD to be an interim action. An investigation is ongoing and if final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this proposed AD would affect 96 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour. Visually inspecting the LH fuel supply hose for twisting would take about 1 work-hour for an estimated cost of $85 per helicopter and $8,160 for the U.S. fleet. Replacing a LH fuel supply hose would take about 8 work-hours and parts would cost about $2,278 for an estimated replacement cost of $2,958 per replacement. Borescope inspecting the LH fuel supply hose would take about 8 work-hours for an estimated cost of $680 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

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

2. Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2020–0904; Product Identifier 2019–SW–041–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model EC225LP helicopters, certificated in any category, with left-hand side (LH) engine fuel supply (fuel supply) hose part number (P/N) 704A34416087 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as incorrect installation of the LH fuel supply hose causing restricted fuel flow to the LH engine. This condition could result in a decrease of the LH engine power when accelerating to a power setting corresponding to One Engine Inoperative power and subsequent reduced control of the helicopter.

(c) Comments Due Date

The FAA must receive comments by November 23, 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

(1) For helicopters delivered to the first operator before November 30, 2018; and for helicopters delivered to the first operator on or after November 30, 2018 that have had the LH fuel supply hose replaced or reinstalled before May 10, 2019:

(i) Within 110 hours time-in-service (TIS), visually inspect the LH fuel supply hose for twisting as shown in Figures 1 and 2 of Airbus Helicopters Alert Service Bulletin No. EC225–71A019, Revision 1, dated February 28, 2019 (ASB EC225–71A019).

(ii) If the LH fuel supply hose has any twisting, before further flight, borescope inspect the entire length of the inside of the fuel supply hose for twisting as shown in Figures 3 through 5 of ASB EC225–71A019.

(A) If the inside of the LH fuel supply hose has any twisting, before further flight, remove the LH fuel supply hose from service and install an airworthy LH fuel supply hose by following the Accomplishment Instructions, paragraph 3.B.3.b of ASB EC225–71A019.

(B) If the LH fuel supply hose does not have any twisting, reinstall the LH fuel supply hose by following the Accomplishment Instructions, paragraph 3.B.3.b of ASB EC225–71A019.

(2) As of the effective date of this AD, do not install an LH fuel supply hose P/N 704A34416087 on any helicopter unless it is installed by following the Accomplishment Instructions, paragraph 3.B.3.b of ASB EC225–71A019.

(f) Alternative Methods of Compliance (AMOCs)

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

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

(g) Additional Information

The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD No. 2019–0092, dated April 26, 2019. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2820, Aircraft Fuel Distribution System.

Issued on October 1, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22125 Filed 10–6–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0909; Project Identifier 2019–SW–118–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters. This proposed AD was prompted by a report that the cabin lateral sliding plug door failed its emergency jettisoning test; subsequent investigation revealed that the jettison handle cable interfered with the cable clamps. This proposed AD would require modifying the release system of each cabin lateral sliding plug door, or modifying the design of the jettison system of each cabin lateral sliding plug door, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. 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 November 23, 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 material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0909.

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–2020–0909; 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: Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one copy of the comments. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0909; Project Identifier 2019–SW–118–AD'' at the beginning of your comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received by the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this NPRM because of those comments.

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 Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@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

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0064R1, dated December 19, 2019 (''EASA AD 2019–0064R1'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters.

This proposed AD was prompted by a report that the cabin lateral sliding plug door failed its emergency jettisoning test; subsequent investigation revealed that the jettison handle cable interfered with the cable clamps. The FAA is proposing this AD to address this condition, which could lead to jamming of the door jettisoning mechanism, preventing the jettisoning of the affected door in an emergency situation, and possibly obstructing occupant evacuation. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0064R1 describes, among other things, procedures for modifying the release system of each cabin lateral sliding plug door, or modifying the design of the jettison

system of each cabin lateral sliding plug door.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0064R1, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Differences Between This Proposed AD and the MCAI

EASA AD 2019–0064R1 specifies inspections of the jettisoning mechanism of the cabin lateral sliding plug doors and corrective actions. This proposed AD does not include those actions. AD 2019–09–03, Amendment 39–19637 (84 FR 22693, May 20, 2019) (''AD 2019–09–03'') already requires those actions. The FAA has determined that this proposed AD would only require the modification specified in EASA AD 2019–0064R1, which would then terminate the requirements of AD 2019–09–03.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0064R1 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0064R1 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0064R1 that is required for compliance with EASA AD 2019–0064R1 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0909 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 19 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 214 work-hours × $85 per hour = Up to $18,190.	$*	Up to $18,190	Up to $345,610.

*The FAA has received no definitive data that would enable the agency to provide parts cost estimates for the actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2020–0909; Project Identifier 2019–SW–118–AD.

(a) Comments Due Date

The FAA must receive comments by November 23, 2020.

(b) Affected ADs

This AD affects AD 2019–09–03, Amendment 39–19637 (84 FR 22693, May 20, 2019) (''AD 2019–09–03'').

(c) Applicability

This AD applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0064R1, dated December 19, 2019 (''EASA AD 2019–0064R1'').

(d) Subject

Joint Aircraft System Component (JASC) Code 5200, Doors.

(e) Reason

This AD was prompted by a report that the cabin lateral sliding plug door failed its emergency jettisoning test; subsequent investigation revealed that the jettison handle cable interfered with the cable clamps. The FAA is issuing this AD to address this condition, which could lead to jamming of the door jettisoning mechanism, preventing the jettisoning of the affected door in an emergency situation, and possibly obstructing occupant evacuation.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, paragraph (3) or (4) of EASA AD 2019–0064R1.

(h) Exceptions to EASA AD 2019–0064R1

(1) Where EASA AD 2019–0064R1 refers to April 10, 2019 (the effective date of EASA AD 2019–0064, dated March 27, 2019), this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0064R1 does not apply to this AD.

(3) If the modification specified in paragraph (4) of EASA AD 2019–0064R1 is done, it must be done at the compliance time specified in paragraph (3) of EASA AD 2019–0064R1.

(4) Although the service information referenced in EASA AD 2019–0064R1 specifies to discard or scrap certain parts, this AD does not include that requirement.

(5) Where paragraph (3) of EASA AD 2019–0064R1 specifies to do a modification ''in accordance with the instructions of section 3 of the modification ASB'' this AD excludes paragraph 3.B.5. of ''the modification ASB.''

(6) Where paragraph (4) of EASA AD 2019–0064R1 refers to ''Eurocopter AS 322 SB No. 52.00.28,'' for this AD use ''Eurocopter AS 332 SB No. 52.00.28.''

(i) Terminating Action for AD 2019–09–03

Accomplishing the actions required by this AD terminates all requirements of AD 2019–09–03.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(k) Related Information

(1) For information about EASA AD 2019–0064R1, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0909.

(2) For more information about this AD, contact Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

Issued on October 1, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22124 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0905; Product Identifier 2019–SW–102–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2015–26–01, which applies to certain Airbus Helicopters Model AS332C1, AS332L1, AS332L2, EC225LP, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters with an energy-absorbing seat. AD 2015–26–01 requires inspecting for the presence of labels (placards) that prohibit stowing anything under the seat, and if a label (placard) is missing or not clearly visible to each occupant, installing a label (placard). Since the FAA issued AD 2015–26–01, the FAA has determined that additional helicopters are affected by the unsafe condition, and that new labels (placards) are required for all affected helicopters. This proposed AD would retain all of the requirements of AD 2015–26–01. This proposed AD would also add helicopters to the applicability and require a modification (installing new labels (placards)). 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 November 23, 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 Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; phone: 972–641–0000 or 800–

232–0323; fax: 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

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–2020–0905; 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: Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3218; email: *kathleen.arrigotti@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–2020–0905; Product Identifier 2019–SW–102–AD'' 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 proposed AD based on those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

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 Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3218; email: *kathleen.arrigotti@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

The FAA issued AD 2015–26–01, Amendment 39–18349 (80 FR 79466, December 22, 2015) (''AD 2015–26–01''), for certain Airbus Helicopters Model AS332C1, AS332L1, AS332L2, EC225LP, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters with an energy-absorbing seat. AD 2015–26–01 requires inspecting for the presence of labels (placards) that prohibit stowing anything under the seat, and if a label (placard) is missing or not clearly visible to each occupant, installing a label (placard). AD 2015–26–01 resulted from the discovery that required labels (placards) had not been systematically installed. The FAA issued AD 2015–26–01 to address any object stowed under an energy-absorbing seat, which could reduce the efficiency of the energy-absorbing function of the seat, resulting in injury to the seat occupants during an accident.

Actions Since AD 2015–26–01 Was Issued

Since AD 2015–26–01 was issued, the FAA has determined that additional helicopters are affected by the unsafe condition, and that new labels (placards) are required for all affected helicopters.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0088R1, dated November 8, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, EC225LP, AS–365N2, AS 365 N3, EC 155B and EC155B1 helicopters with an energy-absorbing seat. EASA advised that during certification of an energy-absorbing seat with a new part number, the labels (placards) that require keeping the space under the seat free of any object were not systematically installed. EASA stated that this condition, if not corrected, could prompt occupants to stow objects under an energy-absorbing seat, which would reduce the effectiveness of the seat and the occupants' chance of surviving an accident. EASA consequently issued AD 2014–0204, dated September 11, 2014; corrected September 12, 2014 (which corresponds to FAA AD 2015–26–01) to require a one-time inspection for the presence of labels (placards) and, if they were missing or unreadable, making and installing labels (placards) prohibiting the placing of an object under an energy absorbing seat. EASA later advised, in EASA AD 2017–0226, dated November 17, 2017 (''EASA AD 2017–0226''), which superseded EASA AD 2014–0204, that additional new labels (placards) were required and that additional helicopters were affected by the unsafe condition. In this MCAI, which supersedes EASA AD 2017–0226, EASA advised that additional extended compliance times were necessary for certain helicopters.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0905.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued the following service information. This service information describes procedures for installing new labels (placards) prohibiting stowage of any object under an energy-absorbing seat. These documents are distinct since they apply to different helicopter models.

- Airbus Helicopters Alert Service Bulletin No. AS332–25.03.16, Revision 0, dated September 7, 2017.
- Airbus Helicopters Alert Service Bulletin No. AS332–25.03.41, Revision 0, dated September 7, 2017.
- Airbus Helicopters Alert Service Bulletin No. AS332–25.03.42, Revision 0, dated September 7, 2017.
- Airbus Helicopters Alert Service Bulletin No. AS365–25.01.67, Revision 0, dated February 12, 2019.
- Airbus Helicopters Alert Service Bulletin No. EC155–25A144, Revision 0, dated February 12, 2019.

- Airbus Helicopters Alert Service Bulletin No. EC225–25A179, Revision 1, dated November 6, 2019.
- Airbus Helicopters Alert Service Bulletin No. EC225–25A203, Revision 0, dated September 7, 2017.

Airbus Helicopters has also issued the following service information. This service information describes procedures for inspecting for labels, placards, or markings that prohibit stowing anything under certain seats and installing a placard. These documents are distinct since they apply to different helicopter models.

- Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017.
- Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66, Revision 1, dated February 12, 2019.
- Airbus Helicopters Alert Service Bulletin No. EC155–04A013, Revision 1, dated February 12, 2019.
- Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 2, dated November 6, 2019.

This proposed AD would also require the following service information, which the Director of the Federal Register approved for incorporation by reference as of January 26, 2016 (80 FR 79466, December 22, 2015).

- Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 0, dated August 26, 2014.
- Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66, Revision 0, dated August 26, 2014.
- Airbus Helicopters Alert Service Bulletin No. EC155–04A013, Revision 0, dated August 26, 2014.
- Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 0, dated August 26, 2014.

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.

Other Related Service Information

Airbus Helicopters issued Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 1, dated September 7, 2017, which describes procedures for inspecting for labels, placards, or markings that prohibit stowing anything under certain seats and installing a placard.

Airbus Helicopters has also issued Airbus Helicopters Alert Service Bulletin No. EC225–25A179, Revision 0, dated September 7, 2017, which describes procedures for installing new labels (placards) prohibiting stowage of any object under an energy-absorbing seat.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of this NPRM

This proposed AD would retain all of the requirements of AD 2015–26–01. This proposed AD would require accomplishing the actions specified in the service information described previously.

Clarification of the Retained Compliance Times

Paragraph (g) of AD 2015–26–01 specified the compliance time as: ''Within 110 hours time in service.'' The FAA has included clarification of the retained compliance time for paragraph (g) of this NPRM, that specifies: ''Within 110 hours time in service after January 26, 2016 (the effective date of AD 2015–26–01) . . .''

Clarification of the Generic Part Number for Seat Type

Figure 1 to paragraph (a) of AD 2015–26–01 specifies an incorrect generic part number for Socea Sogerma seat type ST107. The FAA has corrected that generic part number in figure 1 to paragraphs (c) and (j) of this proposed AD. The incorrect generic part number was 2010107–xx–xx; the correct generic part number is 2510107–xx–xx.

Costs of Compliance

The FAA estimates that this proposed AD affects 90 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (52 Helicopters) (Retained actions from AD 2015–26–01).	1 work-hour × $85 per hour = $85	$0	$85	$4,420
Install label (placard) (52 Helicopters) (Retained actions from AD 2015–26–01).	2 work-hours × $85 per hour = $170	$Minimal	170	8,840
Inspection (38 Helicopters) (New proposed actions).	1 work-hour × $85 per hour = $85	$0	85	3,230
Install label (placard) (38 Helicopters) (New proposed actions).	2 work-hours × $85 per hour = $170	$Minimal	170	6,460
Install new label (placard) (New proposed actions).	2 work-hours × $85 per hour = $170	$Minimal	170	15,300

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–26–01, Amendment 39–18349 (80 FR 79466, December 22, 2015), and adding the following new AD:

Airbus Helicopters: Docket No. FAA–2020–0905; Product Identifier 2019–SW–102–AD.

(a) Comments Due Date

The FAA must receive comments by November 23, 2020.

(b) Affected ADs

This AD replaces AD 2015–26–01, Amendment 39–18349 (80 FR 79466, December 22, 2015) (''AD 2015–26–01'').

(c) Applicability

This AD applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, EC225LP, AS–365N2, AS 365 N3, EC 155B and EC155B1 helicopters, certificated in any category, equipped with at least one energy-absorbing seat listed in figure 1 to paragraphs (c) and (j) of this AD, except any helicopter embodying the applicable Airbus Helicopters modifications on all applicable seat positions listed in figure 2 to paragraph (c) of this AD.

FIGURE 1 TO PARAGRAPHS (c) AND (j)—AFFECTED SEATS

Seat manufacturer	Seat type	Generic P/N
Fischer + Entwicklungen	H110	9606–( )–( )–( ).
	H140	0520–( )–( )–( ).
	H160	0718–( )–( )–( )–( ).
	185/410	9507–( )–( )–( ).
	236/406	9608–( )–( )–( ).
SICMA Aero Seat or Zodiac Seats France	Sicma 192	192xx–xx–xx.
	Sicma 159	1591718–xx.
		159110.
Socea Sogerma	ST102	2510102–xx–xx.
	ST107	2510107–xx–xx.
	ST120	2520120–xx.

Note 1 to Figure 1 to paragraphs (c) and (j): ''xx'' can be any two alphanumeric characters and ''()'' can be any number of alphanumeric characters.

FIGURE 2 TO PARAGRAPH (c)—MODIFICATIONS (INSTALLATION OF LABEL (PLACARD) PROHIBITING STORAGE UNDER THE SEAT)

Helicopter type	Modification	Seat (position)
AS332C, AS332C1, AS332L, AS332L1, AS332L2	0728251 or 332P084159	Cabin.
	0728352 or 332P084160	Cockpit.
	0728403 or 332P084161	3rd Crew Member.
EC225LP	0728251, or 332P084159, or 332P085421.00, or 332P085421.01, or 332P085421.02 or 332P085421.03.	Cabin.
	0728352 or 332P084160	Cockpit.
AS-365N2, AS 365 N3, EC 155B, EC155B1	365V874113.00	All seat configurations.

(d) Subject

Air Transport Association (ATA) of America Code 11, Placards and markings.

(e) Reason

This AD was prompted by the discovery that required labels (placards) prohibiting stowage of any object under an energy-absorbing seat had not been systematically installed. The FAA is issuing this AD to address any object stowed under an energy-absorbing seat which could reduce the efficiency of the energy-absorbing function of the seat, resulting in injury to the seat occupants during an accident.

(f) Compliance

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

(g) Retained Inspection and Corrective Actions With Revised Service Information

This paragraph restates the requirements of paragraph (e) of AD 2015–26–01, with revised service information. Within 110 hours time in service after January 26, 2016 (the effective date of AD 2015–26–01), do the actions specified in paragraphs (g)(1) or (2) of this AD, as applicable for your model helicopter.

(1) For Model AS332C1, AS332L1, AS332L2, and EC225LP helicopters:

(i) Inspect the cabin and cockpit for labels, placards, or markings that prohibit stowing anything under the seats in the locations shown in the figure in the Appendix of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85 or No. EC225–04A012, both

Revision 0 and dated August 26, 2014; or Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017, or Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 2, dated November 6, 2019; as applicable for your model helicopter.

(ii) If a label, placard, or marking is not located in every location depicted in the figure in the Appendix or is not visible and legible to every occupant, before further flight, install a placard in accordance with the Accomplishment Instructions, paragraph 3.B., of Airbus Helicopters Alert Service Bulletin No. AS332 01.00.85 or No. EC225 04A012, both Revision 0 and dated August 26, 2014; or Airbus Helicopters Alert Service Bulletin No. AS332 01.00.85, Revision 1, dated September 7, 2017, or Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 2, dated November 6, 2019; as applicable for your model helicopter.

(2) For Model AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters:

(i) Inspect each seat leg in the cabin and cockpit for labels, placards, or markings that prohibit stowing anything under the seats.

(ii) If a label, placard, or marking does not exist on one leg of each seat or is not visible and legible, before further flight, install a placard in accordance with the Accomplishment Instructions, paragraph 3.B., and the Appendix of Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66 or No. EC155–04A013, both Revision 0 and dated August 26, 2014; or Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66 or No. EC155–04A013, both Revision 1 and dated February 12, 2019; as applicable for your model helicopter.

(h) New Inspection and Corrective Actions for Certain Helicopters

(1) For Model AS332C and AS332L helicopters: Within 110 hours time in service or 30 days, whichever occurs first, after the effective date of this AD, inspect the cabin and cockpit for labels, placards, or markings that prohibit stowing anything under the seats in the locations shown in the figure in the Appendix of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017.

(2) If a label, placard, or marking is not located in every location depicted in the figure in the Appendix or is not visible and legible to every occupant, before further flight, install a placard in accordance with the Accomplishment Instructions, paragraph 3.B., of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017.

(i) New Requirements of This AD: Modification (Install New Placards)

(1) At the applicable times specified in paragraph (i)(2) of this AD, install new placards prohibiting stowage of any object under an energy-absorbing seat in accordance with the Accomplishment Instructions, paragraph 3.B., of the applicable service information specified in paragraphs (i)(1)(i) through (vii) of this AD, except you are not required to discard the old labels (placards). Doing the installation required by this paragraph terminates the requirements of paragraphs (g) and (h) of this AD.

(i) Airbus Helicopters Alert Service Bulletin No. AS332–25.03.16, Revision 0, dated September 7, 2017.

(ii) Airbus Helicopters Alert Service Bulletin No. AS332–25.03.41, Revision 0, dated September 7, 2017.

(iii) Airbus Helicopters Alert Service Bulletin No. AS332–25.03.42, Revision 0, dated September 7, 2017.

(iv) Airbus Helicopters Alert Service Bulletin No. AS365–25.01.67, Revision 0, dated February 12, 2019.

(v) Airbus Helicopters Alert Service Bulletin No. EC155–25A144, Revision 0, dated February 12, 2019.

(vi) Airbus Helicopters Alert Service Bulletin No. EC225–25A179, Revision 1, dated November 6, 2019.

(vii) Airbus Helicopters Alert Service Bulletin No. EC225–25A203, Revision 0, dated September 7, 2017; as applicable for your model helicopter.

(2) At this applicable times specified in paragraph (i)(2)(i) or (ii) of this AD, do the installation required by paragraph (i)(1) of this AD.

(i) For Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, AS–365N2, AS 365 N3, EC 155B, EC155B1, and EC225LP helicopters, all manufacturer serial numbers, except Model EC225LP helicopters, manufacturer serial numbers 2663, 2670, 2854, 2883, 2885, 2901 and 2921: Within 110 hours time in service or 6 months, whichever occurs first after the effective date of this AD.

(ii) For Model EC225LP helicopters, manufacturer serial numbers 2663, 2670, 2854, 2883, 2885, 2901 and 2921: Within 50 hours time in service or 2 months, whichever occurs first after the effective date of this AD.

(j) No Actions Required for Certain Helicopters

For Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters delivered after September 7, 2017: No actions are required, provided that no energy-absorbing seat, as identified in figure 1 to paragraphs (c) and (j) of this AD, has been installed on that helicopter since delivery.

(k) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 1, dated September 7, 2017.

(2) This paragraph provides credit for the actions specified in paragraph (i)(1) and (2) of this AD, if those actions were performed before the effective date of this AD using Airbus Helicopters Alert Service Bulletin No. EC225–25A179, Revision 0, dated September 7, 2017.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(m) Related Information

(1) For more information about this AD, contact Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3218; email: *kathleen.arrigotti@faa.gov.*

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; phone: 972–641–0000 or 800–232–0323; fax: 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Issued on October 1, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22115 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–13–P

Notices

Federal Register
Vol. 85, No. 195
Wednesday, October 7, 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

October 2, 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 November 6, 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 Plant and Health Inspection Service

Title: Environmental Monitoring Form.

OMB Control Number: 0579–0117.

Summary of Collection: The mission of the Animal and Plant Health Inspection Service (APHIS) is to provide leadership in ensuring the health and care of animals and plants, to improve the agricultural productivity and competitiveness, and to contribute to the national economy and the public health. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the regulations of the Council on Environmental Quality that implements the procedural aspects of NEPA (40 CFR 1500–1508). APHIS' regulations require APHIS to implement environmental monitoring for certain activities conducted for pest and disease, control and eradication programs. APHIS Form 2060, Environmental Monitoring Form, will be used to collect information concerning the effects of pesticide used in sensitive habitats.

Need and Use of the Information: APHIS will collect information on the number of collected samples, description of the samples, the environmental conditions at the collection site including wind speed and direction, temperature, and topography. The supporting information contained on the APHIS form 2060 is vital for interpreting the laboratory tests APHIS conducts on its collected samples. If a sample was not accompanied by this form, APHIS would have no way of knowing from which site the sample was taken. Failure to collect this information would prevent APHIS from actively monitoring the effects of pesticides in areas where the inappropriate use of these chemicals could eventually produce disastrous results for vulnerable habitats and species. If information is not collected frequently enough, APHIS' ability to effectively monitor chemical residues in the environment is compromised.

Description of Respondents: State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 110.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,100.

Animal and Plant Health Inspection Service

Title: Highly Pathogenic Avian Influenza, All Subtypes, and Newcastle Disease; Additional Restrictions.

OMB Control Number: 0579–0245.

Summary of Collection: The Animal Health Protection Act (AHPA), 7 U.S.C. 8301, 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 agency charged with carrying out this disease prevention mission is the Animal and Plant Health Inspection Service (APHIS), through its Veterinary Services (VS) Program. Highly pathogenic avian influenza (HPAI) and Newcastle Disease are extremely infectious and often fatal disease affecting all types of birds and poultry.

Need and Use of the Information: To protect the United States against an incursion of HPAI and Newcastle Disease, APHIS requires the use of several information collection activities, including an USDA–APHIS–VS Application For Permit To Import or Transport Controlled Materials or Organisms or Vectors (VS Form 16–3); a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6A); an Approved Warehouse Request And Agreement To Handle Restricted Animal Byproducts (Hunting Trophies & Museum Specimens) (VS Form 16–28); Approved Establishment Request And Agreement To Handle Restricted Animal Byproducts (Hunting Trophies & Museum Specimens) (VS Form 16–29); USDA–APHIS–VS Report of Entry, Shipment of Restricted Imported Animal Products and Animal By-Products, and Other Material (VS Form 16–78); USDA–APHIS–VS Application for Import or in Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, and Hatching Eggs) (VS Form 17–129); USDA–APHIS Agreement of Pet Bird Owner (VS Form 17–8); application of seals and agreements; notarized declaration or affirmation; notification of signs of disease in a recently imported bird; cooperative service agreements, and recordkeeping by processing establishments. APHIS will collect

information to ensure that U.S. birds and poultry undergo appropriate examinations before entering the United States. Without the information, it would be impossible for APHIS to establish an effective line of defense against an introduction of HPAI and Newcastle Disease.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 973.

Frequency of Responses: Reporting and Recordkeeping: On occasion.

Total Burden Hours: 1,932.

Animal and Plant Health Inspection Service

Title: Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit from Quarantined Areas.

OMB Control Number: 0579–0317.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701, *et seq.*), the Secretary of Agriculture, either independently or in cooperation with the States, is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to or widely distributed throughout the United States. The interstate movement of nursery stock from an area quarantined for citrus canker poses an extremely high risk of spreading citrus canker outside the quarantined area. The Animal and Plant Health Inspection Service (APHIS) has regulations in place to prevent the interstate spread of citrus canker. These regulations, contained in 7 CFR 301.75, restrict the interstate movement of regulated articles from and through quarantined areas and prohibit the interstate movement of regulated nursery stock from a quarantined area.

Need and Use of the Information: APHIS uses compliance agreements, limited permits, certificates, and appeal processes to control the movements. Failure to collect required information for the documents could result in severe economic loss to the citrus industry due to the spread of the citrus canker disease.

Description of Respondents: Businesses or other for-profit.

Number of Respondents: 402.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,840.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–22123 Filed 10–6–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/pts.*

DATES: The meeting will be held on Thursday, November 5, 2020, at 6:00 p.m., Alaska Standard Time.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held virtually only. A conference line is set up for those who would like to listen in by telephone. For the conference call number, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ketchikan Misty Fjords Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Penny L. Richardson, RAC Coordinator, by phone at 907–228–4105 (office) or 907–419–5300 (cell), or via email at *penny.richardson@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Update members on past RAC projects, and

2. Propose new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by October 29, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent by mail to Penny L. Richardson, RAC Coordinator, Ketchikan Misty Fjords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901, by email to *penny.richardson@usda.gov,* or via facsimile to 907–225–8738.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: October 1, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–22138 Filed 10–6–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

[Docket No.: 200922–0253]

Commerce Alternative Personnel System

AGENCY: Office of Administration, Office of Human Resources Management, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice announces the expansion of employee coverage under the Commerce Alternative Personnel System (CAPS), formerly the Department of Commerce Personnel Management Demonstration Project, published in the **Federal Register** on December 24, 1997. This coverage is extended to include employees of the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) located in the Southeast Regional Office.

DATES: The amended Commerce Alternative Personnel System is effective October 7, 2020.

FOR FURTHER INFORMATION CONTACT: Department of Commerce—Sandra

Thompson, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 51020, Washington, DC 20230, (202) 482–0056 or Valerie Smith at (202) 482–0272.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Personnel Management (OPM) approved the Department of Commerce (DoC) demonstration project for an alternative personnel management system and published the final plan in the **Federal Register** on Wednesday, December 24, 1997 (62 FR 67434). The demonstration project was designed to simplify current classification systems for greater flexibility in classifying work and paying employees; establish a performance management and rewards system for improving individual and organizational performance; and improve recruiting and examining to attract highly-qualified candidates. The purpose of the project was to strengthen the contribution of human resources management and test whether the same innovations conducted under the National Institute of Standards and Technology alternative personnel management system would produce similarly successful results in other DoC environments. The project was implemented on March 29, 1998. The project plan has been modified fifteen times to clarify certain DoC Demonstration Project authorities, and to extend and expand the project: 64 FR 52810 (September 30, 1999); 68 FR 47948 (August 12, 2003); 68 FR 54505 (September 17, 2003); 70 FR 38732 (July 5, 2005); 71 FR 25615 (May 1, 2006); 71 FR 50950 (August 28, 2006); 74 FR 22728 (May 14, 2009); 80 FR 25 (January 2, 2015); 81 FR 20322 (April 7, 2016); 81 FR 40653 (June 22, 2016); 81 FR 54787 (August 17, 2016); 82 FR 1688 (January 6, 2017); 83 FR 54707 (October 31, 2018); 84 FR 22807 (May 20, 2019); and 85 FR 12771 (March 4, 2020). With the passage of the Consolidated Appropriations Act, 2008, Public Law 110–161, on December 26, 2007, the project was made permanent (extended indefinitely) and renamed the Commerce Alternative Personnel System (CAPS). CAPS provides for modifications to be made as experience is gained, results are analyzed, and conclusions are reached on how the system is working. This notice announces that the DoC expands CAPS to include bargaining unit employees in the NMFS located in the Southeast Regional Office (SERO).

The DoC will follow the CAPS plan as published in the **Federal Register** on December 24, 1997, and subsequent modifications as listed in the Background Section of this notice.

Paula Patrick,

Deputy Director for Human Resources Management and Deputy Chief Human Capital Officer.

Table of Contents

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I. Executive Summary

CAPS is designed to (1) improve hiring and allow DoC to compete more effectively for high-quality candidates through direct hiring, selective use of higher entry salaries, and selective use of recruitment incentives; (2) motivate and retain staff through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention incentives; (3) strengthen the manager's role in personnel management through delegation of personnel authorities; and (4) increase the efficiency of personnel systems through the installation of a simpler and more flexible classification system based on pay banding, through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

The current participating organizations include 1 office of the Deputy Secretary in the Office of the Secretary, 6 offices of the Chief Financial Officer/Assistant Secretary for Administration in the Office of the Secretary; the Bureau of Economic Analysis; 2 units of the National Telecommunications and Information Administration (NTIA): The Institute for Telecommunication Sciences and the First Responder Network Authority (an independent authority within NTIA); and 12 units of the National Oceanic and Atmospheric Administration: the Office of Oceanic and Atmospheric Research, the National Marine Fisheries Service, the National Environmental Satellite, Data, and Information Service, the National Weather Service—Space Environment Center, the National Ocean Service, the Program Planning and Integration Office, the Office of the Under Secretary, the Marine and Aviation Operations, the Office of the Chief Administrative Officer, the Office of the Chief Financial Officer, the Office of Human Capital Services, formerly the Workforce Management Office, and the Office of the Chief Information Officer.

This amendment modifies the December 24, 1997, **Federal Register** notice. Specifically, it expands DoC CAPS to include NMFS bargaining unit employees located in the SERO.

II. Basis for CAPS Expansion

A. Purpose

CAPS is designed to provide supervisors/managers at the lowest organizational level the authority, control, and flexibility to recruit, retain, develop, recognize, and motivate its workforce, while ensuring adequate accountability and oversight.

NMFS is responsible for the stewardship of the nation's ocean resources and their habitat. NMFS provide vital services for the nation including productive and sustainable fisheries, safe sources of seafood, the recovery and conservation of protected resources, and healthy ecosystems. NMFS works in partnership with Regional Fishery Management Councils to assess and predict the status of fish stocks, set catch limits, ensure compliance with fisheries regulations, and reduce bycatch. Under the Marine Mammal Protection Act and the Endangered Species Act, NMFS works to recover protected marine species while allowing economic and recreational opportunities. Since the inception of the demonstration project in 1997, and subsequent modification/expansion notices, units of NMFS have participated in CAPS.

A September 17, 2003, notice (68 FR 54505) announced the expansion of CAPS to include non-bargaining unit employees located in the SERO, in St. Petersburg, Florida. With many NOAA organizations being covered by an alternative personnel management system, NOAA and NMFS made the determination to convert the remaining bargaining unit GS SERO workforce under CAPS.

The expansion of CAPS coverage to include the remaining bargaining unit GS employees of SERO will allow NMFS to continue to benefit from the flexibilities provided by CAPS and should improve the organization's ability to recruit and retain a high-quality workforce.

DoC's CAPS allows for modifications of procedures if no new waiver from law or regulation is added. Given that this expansion is in accordance with existing law and regulation and CAPS is a permanent alternative personnel system, the DoC is authorized to make the changes described in this notice.

B. Participating Employees

Employee notification of this expansion will be accomplished by providing a full set of briefings to employees and managers and providing

them electronic access to all CAPS policies and procedures, including the fifteen previous **Federal Register** notices. This **Federal Register** notice will also be accessible electronically upon approval. Subsequent supervisor training and informational briefings for all employees will be accomplished prior to the implementation date of the expansion.

C. Labor Participation

The Labor organization was notified about the CAPS expansion pertaining to their bargaining unit membership. Bargaining unit employees are covered by NAGE Local R5–45, St. Petersburg, Florida.

III. Changes to the Project Plan

The CAPS at DoC, published in the **Federal Register** on December 24, 1997 (62 FR 67434), is amended as follows:

1. The following organization will be added to the project plan, Section II D—Participating Organizations.

Within the National Oceanic and Atmospheric Administration (NOAA),

National Marine Fisheries Service (NMFS),

Additional employees in the following:

Southeast Regional Office (SERO)

2. The following bargaining unit is added to the project plan, Section II F—Labor Participation Table 4—Bargaining Unit Coverage.

SERO	St. Petersburg, FL	NAGE Local R5–45

[FR Doc. 2020–22105 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[9/25/2020 through 9/30/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
Art Technologies, LLC, d/b/a ART Metals Group.	3795 Symmes Road, Fairfield, OH 45015.	9/28/2020	The firm manufactures stamped metal parts and metal assemblies.
Art's-Way Manufacturing Company, Inc ..	5556 Highway 9, Armstrong, IA 50514 ...	9/29/2020	The firm manufactures agricultural equipment.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2020–22091 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–119]

Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, From the People's Republic of China: Amended Negative Preliminary Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) is amending the preliminary determination of the less-than-fair-value (LTFV) investigation of certain vertical shaft engines between 225cc and 999cc, and parts thereof (vertical shaft engines) from the People's Republic of China (China) to correct a

significant ministerial error with respect to our preliminary critical circumstances determination. The period of investigation is July 1, 2019 through December 31, 2019.

DATES: Applicable October 7, 2020.

FOR FURTHER INFORMATION CONTACT: Leo Ayala or Alex Cipolla, 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) 482–3945 or (202) 482–4956, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2020, Commerce published its *Preliminary Determination*.[1] On August 19, 2020, we received ministerial error comments from Chongqing Zongshen General Power Machine Co., Ltd (Zongshen) alleging that Commerce made certain significant ministerial errors in the *Preliminary Determination*. No other party made an allegation of ministerial errors. On August 24, 2020, Briggs & Stratton Corporation provided reply comments to Zongshen's allegations. After reviewing the allegation, we determine that the *Preliminary Determination* included a significant ministerial error with respect to our preliminary critical circumstances determination. Therefore, we are amending the *Preliminary Determination* to find that critical circumstances do not exist for Zongshen.

Scope of the Investigation

The products covered by this investigation are vertical shaft engines from China. For a complete description of the scope of this investigation, *see* the *Preliminary Determination*.[2]

Analysis of Significant Ministerial Error Allegation

Pursuant to 19 CFR 351.224, and as explained further in the Ministerial Error Memorandum [3] issued concurrently with this Notice, we determine that the *Preliminary Determination* contained an error with respect to our preliminary critical circumstances calculation. In particular, we found an unintentional error in our calculation under the statutory criteria involving massive imports over a relatively short period.[4] In our corrected calculation of Zongshen's massive import analysis, we found that imports based on Zongshen's reported shipments of merchandise under consideration did not increase during the comparison period by more than 15 percent over its respective imports in the base period.[5] Correction of this error results in a determination that Zongshen's imports were not massive during the comparison period and changes the preliminary critical circumstances determination from affirmative to negative for Zongshen.[6] Commerce considers this ministerial error to be significant warranting an amendment to our preliminary critical circumstances determination with respect to Zongshen. Commerce does not consider any of the other alleged ministerial errors to be ministerial in nature.[7]

Therefore, we amend our preliminary determination and find there were not massive imports for Zongshen, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i). Accordingly, we find that critical circumstances do not exist with respect to Zongshen.

Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised, in accordance with section 733(e) of the Act. We will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after August 19, 2020, the date of publication of the *Preliminary Determination.*

We will also instruct CBP to require a cash deposit equal to the estimated preliminary antidumping duty rate reflected in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

Notification of U.S. International Trade Commission (ITC)

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification to Interested Parties

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: September 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–22179 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 51015 (August 19, 2020) (*Preliminary Determination*).

[2] *Id.,* 85 FR at 51017.

[3] *See* Memorandum, ''Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China: Allegation of Ministerial Errors in the Preliminary Determination,'' dated concurrently with this notice (Ministerial Error Memorandum).

[4] *See* section 733(e)(1)(B) of the Act.

[5] *See* Ministerial Error Memorandum.

[6] *Id.*

[7] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–809]

Certain Hot-Rolled Steel Flat Products From Australia: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that the producer/exporter subject to this administrative review made sales in the United States of certain hot-rolled steel flat products from Australia at less than normal value during the period of review (POR) October 1, 2017 through September 30, 2018.

DATES: Applicable October 7, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, 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) 482–0652.

SUPPLEMENTARY INFORMATION:

Background

This review covers one producer/exporter of the subject merchandise: BlueScope Steel (AIS) Pty Ltd./ BlueScope Steel Ltd./BlueScope Steel Distribution (collectively, BlueScope).

On December 10, 2019, Commerce published the *Preliminary Results.*[1] On March 13, 2020, Commerce fully extended the deadline for the final results of this review to June 12, 2020.[2] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[3]

On May 11 and 12, 2020, we received case briefs from BlueScope and the petitioners,[4] respectively.[5] On May 18, 2020, we received rebuttal briefs from both BlueScope and the petitioners.[6]

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[7] The deadline for the final results of this review is now September 30, 2020. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is certain hot-rolled steel flat products from Australia. For a full description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the parties in their case and rebuttal briefs are listed in the appendix to this notice and are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

In the *Preliminary Results,* we found that application of partial adverse facts available (AFA) was appropriate because we found that BlueScope had not acted to the best of its ability to supply Commerce with necessary information. For these final results, we are no longer applying partial AFA to BlueScope's home market sales with incomplete product characteristics. We have also excluded from BlueScope's U.S. sales database products that were re-exported because the first sale to an unaffiliated customer for these sales was to a customer in a third country. Finally, we made a minor change to the arm's-length test conducted for home market sales, using the consolidated customer code rather than the unconsolidated customer code. For a discussion of the above-referenced changes, see the ''Changes Since the Preliminary Results'' section of the Issues and Decision Memorandum.

Final Results of the Review

We are assigning the following dumping margin to the exporter/producer listed below for the POR, October 1, 2017 through September 30, 2018:

Exporter/producer	Weight-average dumping margin (percent)
BlueScope Steel Ltd./BlueScope Steel (AIS) Pty Ltd./BlueScope Steel Distribution Pty Ltd	2.72

Disclosure

We will disclose to interested parties the calculations performed in connection with these final results within five days of the publication of this notice, consistent with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For BlueScope, because its weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce has calculated importer-specific antidumping duty assessment rates. Because BlueScope reported the entered value for all its U.S. sales, we calculated importer-specific antidumping duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis.*

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by BlueScope, for which BlueScope did not know that the merchandise was destined for the United States, 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.[8]

Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of 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 rates for the reviewed company will be the rate shown above; (2) for merchandise exported by producers or exported not covered in this administrative review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash

[1] *See Certain Hot-Rolled Steel Flat Products from Australia: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 68876 (December 10, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2017–2018,'' dated March 13, 2020.

[3] *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.

[4] The petitioners are the United States Steel Corporation, AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, and Steel Dynamics, Inc.

[5] *See* BlueScope's Case Brief, ''Case Brief of BlueScope Steel. Ltd: Certain Hot-Rolled Steel Products from Australia,'' dated March 11, 2020; and Petitioners' Case Brief, ''Hot-Rolled Steel Flat Products from Australia: Petitioners' Case Brief,'' dated March 11, 2020.

[6] *See* BlueScope's Rebuttal Brief, ''Rebuttal Brief of BlueScope Steel Ltd: Certain Hot-Rolled Steel Products from Australia,'' dated March 18, 2020; and Petitioners' Rebuttal Brief, ''Hot-Rolled Steel Flat Products from Australia: Petitioners' Rebuttal Brief,'' dated March 18, 2020.

[7] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[8] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

deposit rate for all other producers or exporters will continue to be 29.58 percent, the all-others rate established in the LTFV investigation.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of 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.

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10]

Dated: September 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes to the Preliminary Results
V. Discussion of the Issues
Comment 1: Reimbursement of Antidumping Duties
Comment 2: Partial AFA for Home Market Sales with Incomplete Control Numbers
Comment 3: U.S. Sales of Products That Were Re-Exported
Comment 4: Programming Error
VI. Recommendation

[FR Doc. 2020–22181 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016).

[10] *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

[C–570–136]

Certain Chassis and Subassemblies Thereof From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

DATES: Applicable October 7, 2020.

FOR FURTHER INFORMATION CONTACT: William Langley at (202) 482–3861, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2020, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of certain chassis and subassemblies thereof (chassis) from the People's Republic of China (China).[1] Currently, the preliminary determination is due no later than October 23, 2020.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On September 17, 2020, the petitioner [2] submitted a timely request that Commerce postpone the preliminary CVD determination.[3] The petitioner stated that it requests postponement to permit parties time to review information submitted by the Government of China and the mandatory respondents, which is currently due no later than October 13, 2020, ten days before the unextended preliminary determination.[4] In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* December 28, 2020. Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: October 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–22177 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Chassis and Subassemblies Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 52549 (August 19, 2020) (*Initiation Notice*).

[2] The petitioner is the Coalition of American Chassis Manufacturers.

[3] *See* Petitioner's Letter, ''Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Postponement of Preliminary Determination,'' dated September 17, 2020.

[4] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–819]

Certain Steel Nails From the Socialist Republic of Vietnam: Rescission of Countervailing Duty Administrative Review; 2019

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain steel nails (steel nails) from the Socialist Republic of Vietnam (Vietnam) for the period January 1, 2019, through December 31, 2019 (POR), based on timely withdrawal of the request for review.

DATES: Applicable October 7, 2020.

FOR FURTHER INFORMATION CONTACT: Natasia Harrison, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1240.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2020, Commerce published a notice of opportunity to request an administrative review of the CVD order on steel nails from Vietnam for the period January 1, 2019, through December 31, 2019.[1] On July 31, 2020, Commerce received a timely request, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), from Mid Continent Steel & Wire Inc. (the petitioner) to conduct an administrative review of this CVD order with respect to 23 companies.[2] Based upon this request, on September 3, 2020, in accordance with section 751(a) of the Act, Commerce published in the **Federal Register** a notice of initiation of administrative review for this CVD order.[3] On September 24, 2020, the petitioner timely withdrew its request for an administrative review for each of the 23 companies.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioner withdrew its request for review by the 90-day deadline. No other party requested an administrative review. Accordingly, we are rescinding the administrative review of the CVD order on steel nails from Vietnam covering the period January 1, 2019, to December 31, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all appropriate entries at a rate equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2019, to December 31, 2019, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of CVDs prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the CVDs occurred and the subsequent assessment of doubled CVDs.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This notice is issued and published in accordance with sections 751 of the Act and 19 CFR 351.213(d)(4).

Dated: October 1, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–22176 Filed 10–6–20; 8:45 am]

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 85 FR 39531 (July 1, 2020).

[2] *See* Petitioner's Letter, ''Certain Steel Nails from SR of Vietnam—Request for Administrative Review,'' dated July 31, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

[4] *See* Petitioner's Letter, ''Certain Steel Nails from Vietnam—Withdrawal of Request for Administrative Review,'' dated September 24, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Notice of Initiation of Antidumping Duty Changed Circumstances Review

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

SUMMARY: The Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) to determine if LNSK Greenhouse Agro Products LLP (LNSK Greenhouse Agro) is the successor-in-interest to Green House Agro Products (Greenhouse Agro) in the context of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from India.

DATES: Applicable October 7, 2020.

FOR FURTHER INFORMATION CONTACT: Adam Simons, 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) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, Commerce published in the **Federal Register** an AD order on shrimp from India.[1] On August 17, 2020, LNSK Greenhouse Agro requested that, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), Commerce conduct a CCR to determine that LNSK Greenhouse Agro is the successor-in-interest to Greenhouse Agro, and accordingly to assign it the cash deposit rate of Greenhouse Agro.[2] In its submission, LNSK Greenhouse Agro stated that Greenhouse Agro undertook a name change to LNSK Greenhouse Agro and changed its corporate

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (February 1, 2005) (*Order*).

[2] *See* LNSK Greenhouse Agro's Letter, ''Request for Changed Circumstances Review: Certain Frozen Warm water Shrimp from India,'' dated August 17, 2020.

structure to become a limited liability partnership.[3]

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[4] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Initiation of CCR

Pursuant to section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), Commerce conducts a CCR upon receipt of information concerning, or a request from, an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by LNSK Greenhouse Agro regarding its claim that it is the successor-in-interest to Greenhouse Agro demonstrates changed circumstances sufficient to warrant such a review.[5] Therefore, in accordance with section 751(b)(1)(A) of the Act and 19 CFR 351.216(d) and (e), we are initiating a CCR based upon the information contained in LNSK Greenhouse Agro's submission.

In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[6] While no single factor or combination of factors necessarily provides a dispositive indication of a successor-in-interest relationship, generally Commerce considers the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[7] Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.[8]

In its CCR request, LNSK Greenhouse Agro has provided sufficient evidence to warrant a review to determine if LNSK Greenhouse Agro is the successor-in-interest to Greenhouse Agro for purposes of the AD order on shrimp from India. Commerce intends to publish in the **Federal Register** a notice of preliminary results of the CCR, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth Commerce's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. Commerce will issue its final results of the review in accordance with the time limits set forth in 19 CFR 351.216(e).

Notification to Interested Parties

We are issuing this notice in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221(b)(1).

Dated: October 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–22206 Filed 10–6–20; 8:45 am]

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[3] *Id.* at 8.

[4] For a complete description of the scope of the *Order, see Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 57847 (October 29, 2019), and accompanying Issues and Decision Memorandum at ''Scope of the Order'' section.

[5] *See* 19 CFR 351.216(d).

[6] *See, e.g., Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 81 FR 75376 (October 31, 2016) (*Shrimp from India Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 81 FR 90774 (December 15, 2016) (*Shrimp from India Final Results*).

[7] *See, e.g., Shrimp from India Preliminary Results,* 81 FR at 75377, unchanged in *Shrimp from India Final Results,* 81 FR at 90774.

[8] *Id.; see also Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan,* 67 FR 58, 59 (January 2, 2002); *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688, 34689 (June 18, 2010); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998), in which Commerce found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Partial Rescission of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is partially rescinding the administrative review of the antidumping duty order on certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) for the period of review (POR) September 1, 2018, through August 31, 2019.

DATES: Applicable October 7, 2020.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Marc Castillo, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0519, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on cold-rolled steel from Korea.[1] On November 12, 2019, pursuant to requests from interested parties, Commerce published in the **Federal Register** the notice of initiation of an antidumping duty administrative review with respect to 38 companies, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[2] On February 5, 2020, all requests for an administrative review of 32 companies were timely withdrawn.[3]

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 84 FR 45949 (September 3, 2019).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 61011 (November 12, 2019) (*Initiation Notice*).

[3] *See* ArcelorMittal USA LLC's, AK Steel Corporation's, Nucor Corporation's, Steel Dynamics, Inc.'s, and United States Steel Corporation's Letter, ''Cold-Rolled Steel Flat Products from the Republic of Korea:, Petitioners' Partial Withdrawal of Request for Review,'' dated February 5, 2020.

administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. All requests for review of the companies listed in the Appendix to this notice were withdrawn within 90 days of the publication of the *Initiation Notice*.[4] Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to the 32 companies listed in the Appendix to this notice.

The review will continue with respect to the following companies: Dongbu Incheon Steel Co., Ltd.; Dongbu Steel Co., Ltd.; Hyundai Steel Company; POSCO; POSCO Daewoo Corporation; and POSCO International Corporation.[5]

Assessment

Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a final 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 doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: October 2, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

All requests for review for the following 32 companies were timely withdrawn:

1. AJU Steel Co., Ltd.
2. Ameri Source Korea
3. Busung Steel Co., Ltd.
4. Cenit Co., Ltd.
5. Daewoo Logistics Corporation
6. Dai Yang Metal Co., Ltd.
7. DK GNS Co., Ltd.
8. Dongkuk Industries Co., Ltd.
9. Dongkuk Steel Mill Co., Ltd.
10. GS Global Corporation
11. Hanawell Co., Ltd.
12. Hankum Co., Ltd.
13. Hyosung TNC Corporation
14. Hyundai BNG Steel Co., Ltd.
15. Hyundai Corporation
16. Hyundai Glovis Co., Ltd.
17. Hyundai Group
18. Hyundai HYSCO
19. Hyundai Motor Company
20. ILJIN NTS Co., Ltd.
21. ILJIN Steel Corporation
22. Jeen Pung Industrial Co., Ltd.
23. Kolon Global Corporation
24. Okaya Korea Co., Ltd.
25. PL Special Steel Co., Ltd.
26. POSCO Coated and Color Steel Co., Ltd.
27. Samsung C & T Corporation
28. Samsung STS Co., Ltd.
29. SeAH Steel Corporation
30. SK Networks Co., Ltd.
31. TGS Pipe Co., Ltd.
32. Tl Automotive Ltd.

[FR Doc. 2020–22180 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA541]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public workshop.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and the NMFS Northwest Science Center will hold an online workshop to review data and analyses proposed to inform new assessments for Dover sole, copper rockfish, quillback rockfish, and squarespot scheduled to be conducted next year. The workshop is open to the public.

DATES: The pre-assessment workshop will be held Monday, October 26, 2020, beginning at 12:30 p.m. Pacific Daylight Time and continuing until 4:30 p.m. or until business for the day has been completed. The pre-assessment workshop will continue on Tuesday, October 27, 2020, beginning at 12:30 p.m. and continuing until 4:30 p.m. or until business for the day has been completed.

ADDRESSES: The pre-assessment workshop will be an online meeting. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: The purpose of the pre-assessment workshop is to review data and analyses proposed to inform 2021 assessments for Dover sole, copper rockfish, quillback rockfish, and squarespot rockfish. Stock assessment teams will solicit advice from data stewards, stakeholders, and fishery managers knowledgeable about these stocks and these data to prepare for these assessments.

No management actions will be decided by the workshop participants. The participants' role will be development of recommendations for consideration by the stock assessment teams assigned to conduct these assessments. Assessments for these four stocks are tentatively scheduled for peer review in a May 3–7, 2021 Stock Assessment Review (STAR) panel. The Pacific Council and the Pacific Council's Scientific and Statistical Committee are scheduled to consider these draft assessments for use in informing management decisions at their June 2021 meeting in Vancouver, WA.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to

[4] *Id.*

[5] *See Initiation Notice,* 84 FR 61011.

those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC Groundfish Subcommittee to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2412 at least 10 days prior to the meeting date.

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

Dated: October 2, 2020.

Diane M. DeJames-Daly,

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

[FR Doc. 2020–22162 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA536]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of Wreckfish Individual Transferable Quota (ITQ) Shareholders and Wholesale Dealers.

DATES: The meeting will be held via webinar on October 26, 2020, from 1:30 p.m. until 4 p.m.

ADDRESSES:

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is required. Webinar registration and briefing book materials will be available two weeks prior to the meeting at: *http://safmc.net/safmc-meetings/current-advisory-panel-meetings/.* Public comment will also be allowed as part of the meeting agenda.

FOR FURTHER INFORMATION CONTACT: Dr. Brian Cheuvront, Deputy Executive Director for Management, SAFMC, phone: (843) 302–8442; email: *brian.cheuvront@safmc.net.*

SUPPLEMENTARY INFORMATION: The Wreckfish Shareholders and Wholesale Dealers will meet jointly via webinar. Agenda items include:

1. A review of potential actions being considered by the Council resulting from the 2019 Wreckfish ITQ Program review;

2. An update on timing of Snapper Grouper Amendment 48 development; and

3. Discussion of actions to include in Snapper Grouper Amendment 48 and recommendations for Council consideration.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 2, 2020.

Diane M. DeJames-Daly,

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

[FR Doc. 2020–22155 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA540]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Groundfish Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold an online meeting to review proposed length-based assessment methods. The meeting is open to the public.

DATES: The SSC Groundfish Subcommittee's online meeting will be held Friday, October 23, 2020, beginning at 2 p.m. Pacific Daylight Time and continuing until 4 p.m. or until business for the day has been completed.

ADDRESSES: The SSC Groundfish Subcommittee meeting will be an online meeting. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: The purpose of the SSC Groundfish Subcommittee meeting is to review proposed length-based assessment methods. This is a follow-up review of stock synthesis with catch and length (SS–CL) and SS–CL with indices (SS–CL–Index) methods proposed by the NMFS Northwest Fisheries Science Center that occurred on May 12–14, 2020. The SSC recommended this review (see *https://www.pcouncil.org/documents/2020/09/agenda-item-d-4-a-supplemental-ssc-report-1-2.pdf/*) at the November 2020 Pacific Council meeting to review several short-term tasks, detailed in section 6 of the May 12–14 Methods Review Panel report (see *https://www.pcouncil.org/documents/2020/08/d-4-attachment-2-assessment-methodology-review-of-length-based-assessment-methods.pdf/*).

No management actions will be decided by the SSC Groundfish Subcommittee. The SSC Groundfish Subcommittee members' role will be development of recommendations and reports for consideration by the SSC and Pacific Council at the virtual November meeting of the Pacific Council.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC Groundfish Subcommittee to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2412, at least 10 days prior to the meeting date.

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

Dated: October 2, 2020.

Diane M. DeJames-Daly,

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

[FR Doc. 2020–22164 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA521]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Hampton Roads Bridge Tunnel Expansion Project in Norfolk, Virginia

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

ACTION: Notice; receipt of application; request for comments.

SUMMARY: NMFS has received a request from the Hampton Roads Connector Partners (HRCP) for authorization to take small numbers of marine mammals incidental to pile driving and removal activities at the Hampton Roads Bridge Tunnel Expansion Project (HRBT) in Norfolk, Virginia over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the HRCP's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the HRCP's application and request.

DATES: Comments and information must be received no later than November 6, 2020.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/node/23111* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of HRCP's application may be obtained online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 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.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, 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).

Summary of Request

On November 19, 2019, NMFS received application from HRCP requesting authorization for take of marine mammals incidental to construction activities related to a major road transport infrastructure project along the existing I–64 highway in Virginia, consisting of roadway improvements, trestle bridges, and bored tunnels crossing Hampton Roads between Norfolk and Hampton, Virginia. After the HRCP responded to our questions, we determined the application was adequate and complete on September 29, 2020. The requested regulations would be valid for 5 years, from February 2021 through January 2026. HRCP plans to conduct necessary work, including pile installation and removal. Pile installation methods will include impact and vibratory driving, jetting, and drilling with a down-the-hole hammer. Pile removal techniques for temporary piles will include vibratory pile removal or cutting three feet below the mudline. The proposed action may incidentally expose marine mammals occurring in the vicinity to example elevated levels of underwater sound, thereby resulting in incidental take, by Level A and Level B harassment,. Therefore, the HRCP requests authorization to incidentally take marine mammals.

Specified Activities

The Hampton Roads Bridge Tunnel project is a major road transport infrastructure project along the existing I–64 highway in Virginia, consisting of roadway improvements, trestle bridges, and bored tunnels crossing Hampton Roads between Norfolk and Hampton. The proposed project will address severe traffic congestion at the existing HRBT crossing by increasing capacity The proposed project will include widening I–64 to create an eight-lane facility with a consistent six-lanes between the I–64/I–664 and I–64/I–564 Interchange, which could expand to eight-lanes during peak travel periods with the use of drivable shoulder lanes within the project limits. The proposed project will include the construction of

two new two-lane tunnels, expansion of the existing portal islands, and full replacement of the existing North and South bridge-trestles. An estimated 6,746 piles would be installed and 3,856 piles would be removed over 5 years. Pile installation and removal activities would take place for approximately 312 days per year based on a 6-day work week. Bottlenose dolphins (*Tursiops spp.*), humpback whales (*Megaptera novaeangliae*), harbor porpoises (*Phocoena phocoena*), harbor seals (*Phoca vitulina*), and gray seals (*Halichoerus* grypus) have been observed in the area.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the HRCP's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the HRCP, if appropriate.

Dated: October 2, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–22173 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 06489–XA531]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a 4-day webinar meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

DATES: The webinar will convene Monday, October 26 through Thursday, October 29, 2020, from 9 a.m. until 4 p.m. EDT.

ADDRESSES: The meeting will take place via webinar; you may register for the meeting at *www.gulfcouncil.org.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, October 26, 2020; 9 a.m.–4 p.m.

The meeting will begin in FULL COUNCIL open to the public to review and adopt the October 2020–August 2021 Council Committee Roster.

At approximately 9:15 a.m. the Data Collection Committee will review potential regulatory changes from Commercial Electronic Logbook Program Implementation; and, receive an update on Southeast For-hire Electronic Reporting (SEFHIER) Program. The Gulf SEDAR Committee will receive an update on Operational Assessment Process and Scientific and Statistical Committee (SSC) Recommendations; review Interim Analyses—Discussion on Timing and Use for Management; and, receive the Steering Committee report from the October 16, 2020 meeting. The Law Enforcement Committee will receive a meeting summary from the Law Enforcement Technical Committee meeting in March 2020.

The Sustainable Fisheries Committee will finalize recommendations on Executive Order 13921 from Public Comments and from the Council, receive a summary report from the Joint Section 102 Workgroup, and discuss Allocation Review Procedures. The Administrative/Budget Committee will review expenditures for No-Cost Extension Request (FY2014–2019) and 2020 Expenditures. The Committee will also review and discuss Scopes of Work (FY 2014–2019) Activities.

Tuesday, October 27, 2020; 9 a.m.–4 p.m.

The Reef Fish Committee will begin with reviewing Reef Fish Landings, Final Action: Framework Action to Adjust State Recreation Red Snapper Catch Limits, Public Hearing Draft Amendment 53: Red Grouper Catch Limits and Sector Allocations and Draft Framework Action: Modification of the Gulf of Mexico Lane Snapper Annual Catch Limit.

The Committee will also review Gray Triggerfish Interim Analysis, Public Hearing Draft Amendment 36B: Modifications to Commercial Individual Fishing Quota (IFQ) Programs, and any remaining Reef Fish Advisory Panel recommendations.

The Gulf of Mexico Fishery Management Council and National Marine Fisheries Service (NMFS) will hold an informal Question and Answer session immediately following the Reef Fish Committee.

Wednesday, October 28, 2020; 9 a.m.–4:15 p.m.

The Mackerel Committee will receive an update on Coastal Migratory Pelagics Landings, review SEDAR 38 Update: Gulf of Mexico King Mackerel Stock Assessment and receive a presentation on the Gulf of Mexico Migratory Group Cobia Draft Options.

Full Council will reconvene mid-morning (10:45 a.m.) with a Call to Order, Announcements, and Introductions; Adoption of Agenda and Approval of Minutes. The Council will receive presentations on 2019 Report to Congress on Illegal, Unreported, and Unregulated (IUU) Fishing and a presentation on Deepwater Horizon Open Ocean Fish Restoration. Following lunch, the Council will hold public comment testimony beginning at approximately 1 p.m. until 3:30 p.m. for Comments on Executive Order 13921, Final Action: Framework Action to Adjust State Recreational Red Snapper Catch Limits, and open testimony on other fishery issues or concerns. Public comment may begin earlier than 1 p.m. EDT but will not conclude before that time. Persons wishing to give public testimony must follow the instructions on the Council website before the start of the public comment period at 1 p.m. EDT.

Following public comment, the Council will receive the Data Collection committee report.

Thursday, October 29, 2020; 9 a.m.–4 p.m.

The Council will continue to receive committee reports from Administrative/Budget, Gulf SEDAR, Sustainable Fisheries, Mackerel, Shrimp, and Reef Fish Committees. The Council will receive updates from the following supporting agencies: Mississippi Law Enforcement Efforts; South Atlantic Fishery Management Council; NOAA Office of Law Enforcement (OLE); Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will discuss any Other Business items.

—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as

required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

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

Dated: October 2, 2020.

Diane M. DeJames-Daly,

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

[FR Doc. 2020–22154 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA522]

Takes 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: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Point Blue Conservation Science (Point Blue) to incidentally harass, by Level B harassment only, marine mammals during seabird research activities in central California.

DATES: This Authorization is effective from October 1, 2020 through September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such 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 such takings are set forth.

History of Request

On January 4, 2018, NMFS received a request from Point Blue for an IHA to take marine mammals incidental to seabird and marine mammal research monitoring taking place at three locations in central California. Point Blue's request was for take of California sea lions (*Zalophus californianus*), Pacific harbor seals *(Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) by Level B harassment only. NMFS published a notice of a proposed IHA and request for comments in the **Federal Register** on May 7, 2018 (83 FR 20045). We subsequently published the final notice of our issuance of the IHA on July 5, 2018 (83 FR 31372), making the IHA valid for July 7, 2018 through July 6, 2019.

On September 17, 2019, NMFS received an application from Point Blue requesting a letter of authorization (LOA) for take of marine mammals incidental to seabird research activities in central California over the course of five years. We determined the application was adequate and complete on November 26, 2019 and published a notice of receipt of application in the **Federal Register** on December 4, 2019 (84 FR 66379). On June 17, 2020, NMFS received a request from Point Blue for an IHA to take marine mammals incidental to seabird research and monitoring in central California. Point Blue's application was determined to be adequate and complete on August 6, 2020. This IHA is effective for a period of one year from the date of issuance (*i.e.,* October 1, 2020 to September 30, 2021), with the LOA expected to be effective from January 1, 2021 to December 31, 2025.

Point Blue's planned activities are identical to those analyzed in the 2018 IHA, as are the mitigation, monitoring, and reporting requirements described in detail in the **Federal Register** notice of issuance of the 2018 IHA (83 FR 31372; July 5, 2018). The authorized take numbers for Steller sea lions have increased slightly, while the authorized take numbers for California sea lions, harbor seals, and northern elephant seals are identical to those analyzed in the 2018 IHA. Please see the *Estimated Take* section of this notice for more information.

Description of the Activity and Anticipated Impacts

Point Blue plans to monitor and census seabird populations, observe seabird nesting habitat, restore nesting burrows, and resupply a field station annually in central California. The planned activities occur on Southeast Farallon Island (SEFI), Año Nuevo Island (ANO), and Point Reyes National Seashore (PRNS). Point Blue, along with partners Oikonos Ecosystem Knowledge and PRNS, have been conducting seabird research activities at these locations 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. Presence of researchers has the potential to disturb pinnipeds hauled out at SEFI,

ANO, and PRNS. The seabird research and monitoring activities planned by Point Blue are identical to those analyzed in the 2018–2019 IHA.

NMFS refers the reader to the documents related to the previously issued 2018–2019 IHA for more detailed description of the project activities. These previous documents include the **Federal Register** notice of the issuance of the 2018–2019 IHA for Point Blue's seabird research activities (83 FR 31372, July 5, 2018), the **Federal Register** notice of the proposed IHA (83 FR 20045; May 7, 2018), Point Blue's application, and all associated references and documents, which are available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* A detailed description of the seabird research and monitoring activities is found in these documents.

Detailed Description of the Action

A detailed description of the planned seabird research and monitoring activities is found in these previous documents. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take has been authorized, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the 2018–2019 authorization (83 FR 20045; May 7, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. The 2018 Stock Assessment Report notes that the estimated abundance of California sea lions has decreased slightly, however, neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the ''Description of Marine Mammals in the Area of Specified Activities'' section contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the previous IHA, which remains applicable to the issuance of this IHA. There is no new information on potential effects that affects our initial analysis of potential impacts on marine mammals and their habitat.

Estimated Take

Point Blue has been conducting seabird research activities at SEFI, ANI, and PRNS for over 30 years. Under previous IHAs, Point Blue has documented the numbers of marine mammals taken by Level B harassment at each of the research stations. Take estimates are based on take reported by Point Blue in the last five years (Table 1). Takes recorded in all previous monitoring reports were based on occurrences that are consistent with Levels 2 and 3 of the three-point harassment scale (see Table 3). For all species except California sea lions, Point Blue's requested annual take was calculated as the maximum annual recorded take for each species over the last five years (2015–2019) or the authorized take from the most recent IHA, whichever was greater. For California sea lions, the authorized take is identical to the authorized take in the most recent authorization, which is less than the highest year. The recorded take of California sea lions has been decreasing over the past five years, which is why the take numbers from the highest year were not used. However, 32,623 takes of California sea lions by Level B harassment are authorized in order to sufficiently account for any unexpected increases in occurrences of California sea lions such as that which occurred between 2014 and 2015, when the recorded takes went up from around 10,000 to 36,000.

A detailed description of the methods and inputs used to estimate take for most recent IHA is found in the **Federal Register** notices of the proposed and final IHAs for the 2018–2019 authorization (83 FR 20045, May 7, 2018; 83 FR 31372, July 5, 2018) but in summary, the take estimates are based on historical data from the previous five monitoring reports (2014, 2015, 2016, 2017, and 2018) to generate 95 percent confidence interval maximums (assuming normal distribution) using STATA, a general-purpose statistical computer package.

TABLE 1—REPORTED TAKE OBSERVATIONS FROM PREVIOUS IHAS

Species	Reported take observations for all activities						Authorized takes from most recent IHA	Total authorized annual takes by Level B harassment
	2014	2015	2016	2017	2018	2019		
California sea lion	10,048	36,417	23,173	22,752	17,487	10,408	32,623	32,623
Northern elephant seal	145	175	119	202	85	79	239	239
Pacific harbor seal	284	292	175	234	229	82	304	304
Steller sea lion	59	31	32	35	5	61	43	61

In this authorization, the expected number of survey days, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The only change from the most recent authorization is the authorized take numbers for Steller sea lions, which increased based on consideration of reported take numbers from past authorizations.

TABLE 2—POPULATION ABUNDANCE ESTIMATES, TOTAL AUTHORIZED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN

Species	Stock	Stock abundance	Total authorized level B take	Percentage of stock or population
California sea lion	U.S	257,606	32,623	12.7
Northern elephant seal	California breeding stock	179,000	239	0.13
Harbor seal	California	30,968	304	0.98
Steller sea lion	Eastern U.S	41,638	61	0.14

Description of Required Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures described here are identical to those included in the notice announcing the issuance of the 2018–2019 IHA (83 FR 31372; July 5, 2018), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are included in this IHA:

To reduce the potential for disturbance from acoustic and visual stimuli associated with survey activities Point Blue must implement the following mitigation measures for marine mammals:

(1) Slow approach to beaches for boat landings to avoid stampede, provide animals opportunity to enter water, and avoid vessel strikes;

(2) 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.,* site surveys must not be conducted if fur seals are present; if other 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) 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) Cease or delay visits if the number of takes that have been authorized are met, if a species for which takes were not authorized is observed (*e.g.,* northern fur seals (*Callorhinus ursinus*) and Guadalupe fur seals (*Arctocephalus townsendi*)), or if pups are present;

(5) 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;

(6) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds;

(7) Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds;

(8) Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view;

(9) 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; and

(10) Require that beach landings on ANI only occur after any pinnipeds that might be present on the landing beach have entered the water.

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 3. Note that only observations of disturbance noted in Levels 2 and 3 should be recorded as takes.

TABLE 3—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 must be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1, 2020 through December 31, 2020. NMFS requires that Point Blue submit annual monitoring report data on a calendar year schedule, regardless of the current IHA'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 IHA's regardless of the existing IHA's issuance date. Point Blue will submit a draft monitoring report for the 2020 activities to NMFS Office of Protected Resources by April 1, 2021. 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.

Point Blue must also submit a draft monitoring report covering the period from January 1, 2021 through the date of expiration of this authorization. This report will be due 90 days after the expiration of this authorization. A final report must 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 reports must contain the informational elements described above, at minimum, as well as the raw sightings data.

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to the NMFS West Coast Regional Office.

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Point Blue must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator. The report must include the following information:

(1) Time and date of the incident;

(2) Description of the incident;

(3) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(4) Description of all marine mammal observations in the 24 hours preceding the incident;

(5) Species identification or description of the animal(s) involved;

(6) Fate of the animal(s); and

(7) Photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Point Blue to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Point Blue may not resume the activities until notified by NMFS.

In the event that an injured or dead marine mammal is discovered and it is determined that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Point Blue must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information required in the report on unauthorized take. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Point Blue to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities covered by the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue must report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Point Blue must provide photographs, video footage, or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on August 28, 2020 (85 FR 53327). During the 30-day public comment period, the Marine Mammal Commission (Commission) submitted a letter, providing comments as described below.

Comment: The Commission recommended issuing the IHA to Point Blue, subject to inclusion of the proposed mitigation, monitoring, and reporting measures and contingent on inclusion of a condition in the final incidental harassment authorization stipulating that the final rule, when issued, will supersede the authorization.

Response: NMFS thanks the Commission for their recommendation and has included this stipulation in the final IHA issued to Point Blue.

Determinations

The seabird research and monitoring activities planned by Point Blue, the method of taking, and the effects of the action are identical to those analyzed in the 2018–2019 IHA, as is the planned frequency of research site visits within the authorization period. The potential effects of Point Blue's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activity in the initial IHA, NMFS determined that Point Blue's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than 13 percent for all stocks). The numbers of California sea lions, harbor seals, and northern elephant seals authorized to be taken are identical to those authorized in the 2018–2019 IHA, while the numbers of Steller sea lions authorized to be taken have increased slightly. However, the increased numbers of Steller sea lions result in only minor increased percentage of stock authorized to be taken (*e.g.,* from 0.10 to 0.14 percent of the Eastern U.S. stock of Steller sea lions) and NMFS has determined that the authorized take is still considered small relative to the relevant stock abundances. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of the California sea lion stock decreasing slightly and the increased estimated take of Steller sea lions. Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) Point Blue's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate

monitoring and reporting requirements are included.

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. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 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 determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to Point Blue for the harassment of marine mammals incidental to conducting seabird research and monitoring activities in central California for a period of one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 1, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–22099 Filed 10–6–20; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2020–0031]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing a new information collection, titled, ''Request for an Advisory Opinion.''

DATES: Written comments are encouraged and must be received on or before November 6, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under Review,'' use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Request for an Advisory Opinion.

OMB Control Number: 3170–XXXX.

Type of Review: New collection (Request for a new OMB Control Number).

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 6,000.

Abstract: The Bureau is proposing to establish an Advisory Opinion (AO) Program. AOs issued under the program would be interpretive rules under the Administrative Procedure Act that respond to a specific request for clarity on an interpretive question regarding a Bureau-administered regulation or statute. The **Federal Register** notice inviting public comment on the proposed program lays out the process for submitting a request by an AO. Under the program, parties would be able to request interpretive guidance, in the form of an AO, to resolve regulatory uncertainty. The Bureau would have discretion to decide which AOs to respond to. The Bureau intends to publish AOs as well as a description of the incoming request. The requests for an AO, and thus the information collection, may be submitted by persons, primarily business or other for-profit entities. The information collected will be used by the Bureau to determine whether to pursue the issuance of an AO responsive to the request.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on June 22, 2020, 85 FR 37394, Docket Number: CFPB–2020–0019. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: October 2, 2020.

Suzan Muslu,

Data Governance Manager, Bureau of Consumer Financial Protection.

[FR Doc. 2020–22193 Filed 10–6–20; 8:45 am]

BILLING CODE 4810–AM–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public hearing.

SUMMARY: Public Hearing: Election Security.

DATES: Wednesday, October 14, 2020, 1:30 p.m. Eastern.

ADDRESSES:

Virtual

The hearing is open to the public and will be livestreamed on Microsoft Teams Live Events with the link available at *eac.gov.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual hearing on election security and preparedness for November 2020 elections.

Agenda: The U.S. Election Assistance Commission (EAC) will hold a hearing on strengthening election security and preparedness for the November 2020 elections. Speakers from federal agencies will offer remarks on issues surrounding election security, what their agencies have done to combat foreign interference, and how officials are responding to the security challenges COVID–19 presents to elections. Speakers will also answer questions from the EAC Commissioners.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

STATUS: This hearing will be open to the public.

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2020–22229 Filed 10–5–20; 11:15 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

DATES: Monday, October 26, 2020; 1:00 p.m.–4:00 p.m.

ADDRESSES: Online Virtual Meeting. To attend, please send an email to: *srscitizensadvisoryboard@gmail.com* by no later than 4:00 p.m. ET on Friday, October 23, 2020.

FOR FURTHER INFORMATION CONTACT: Amy Boyette, Office of External Affairs, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

—Meeting Rules and Agenda Review
—Opening and Chair Update
—Agency Updates
—Break
—Committee Round Robin:
- Facilities Disposition & Site Remediation Committee
- Nuclear Materials Committee
- Strategic & Legacy Management Committee
- Waste Management Committee
- Administrative & Outreach Committee

—Break
—Draft Recommendation Discussion
—Reading of Public Comments
—Voting on Draft Recommendation
—Adjourn

Public Participation: The online virtual meeting is open to the public. Written statements may be filed with the Board either before or after the meeting as there will not be opportunities for live public comment during this online virtual meeting. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit public comments should email them as directed above.

Public Comments: Public comments will be accepted via email prior to and after the meeting. Comments received by no later than 4:00 p.m. ET on Friday, October 23, 2020 will be read aloud during the virtual meeting. Comments will also be accepted after the meeting, by no later than 4:00 p.m. ET on Monday, November 2, 2020. Please submit comments to *srscitizensadvisoryboard@gmail.com.*

Minutes: Minutes will be available by writing or calling Amy Boyette at the address or telephone number listed above. Minutes will also be available at the following website: *https://cab.srs.gov/srs-cab.html.*

Signed in Washington, DC, on October 2, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–22211 Filed 10–6–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–96–000.

Applicants: NRG Energy, Inc., Direct Energy Marketing Inc., Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Gateway Energy Services Corporation.

Description: Supplement to August 31, 2020 Application for Authorization Under Section 203 of the Federal Power Act, et al. of NRG Energy, Inc., et al.

Filed Date: 9/30/20.

Accession Number: 20200930–5218.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: EC20–107–000.

Applicants: Nine Mile Point Nuclear Station, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Nine Mile Point Nuclear Station, LLC.

Filed Date: 9/30/20.

Accession Number: 20200930–5222.

Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: EC21–3–000.

Applicants: Desert Harvest, LLC, Desert Harvest II LLC, Maverick Solar, LLC, Maverick Solar 4, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Desert Harvest, LLC, et al.

Filed Date: 10/1/20.

Accession Number: 20201001–5235.

Comments Due: 5 p.m. ET 10/22/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–254–002.

Applicants: PJM Interconnection, L.L.C., Wabash Valley Power Association, Inc.

Description: Compliance filing: Compliance Filing per Commission's 1/16/2020 Order in Docket No. ER20–254–001 to be effective 1/1/2021.

Filed Date: 10/1/20.

Accession Number: 20201001–5113.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER20–256–002.

Applicants: PJM Interconnection, L.L.C., Wabash Valley Power Association, Inc.

Description: Compliance filing: Compliance Filing per Commission's 1/16/2020 in Docket No. ER20–256–001 to be effective 1/1/2021.

Filed Date: 10/1/20.

Accession Number: 20201001–5114.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER20–3041–001.

Applicants: Public Service Company of New Mexico.

Description: Tariff Amendment: PNM EIM OATT Tariff Changes Attachment S to be effective 4/1/202.1.

Filed Date: 10/1/20.

Accession Number: 20201001–5131.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER20–3044–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: NTEC PSA to be effective 1/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5183.

Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: ER20–3045–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: Prescott PSA to be effective 1/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5185.

Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: ER20–3046–000.

Applicants: PJM Interconnection, L.L.C., Indiana Michigan Power Company, American Electric Power Service Corporation.

Description: § 205(d) Rate Filing: AEP submits ILDSA SA No. 5120 and Union St Facilities Agreement to be effective 12/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5190.

Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: ER21–1–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: § 205(d) Rate Filing: WPC SPEC Ex A and C Modification Filing to be effective 11/1/2020.

Filed Date: 10/1/20.

Accession Number: 20201001–5083.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER21–2–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Monte Alto Windpower 1st Amend and Restated Generation Interconnection Agr to be effective 9/25/2020.

Filed Date: 10/1/20.

Accession Number: 20201001–5093.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER21–3–000.

Applicants: Southwest Power Pool, Inc.

Description: Baseline eTariff Filing: Western Energy Imblance Service Tariff to be effective 2/1/2021.

Filed Date: 10/1/20.

Accession Number: 20201001–5095.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER21–4–000.

Applicants: Southwest Power Pool, Inc.

Description: Baseline eTariff Filing: Western Energy Imbalance Service Rate Schedule Tariff to be effective 2/1/2021.

Filed Date: 10/1/20.

Accession Number: 20201001–5096.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER21–5–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Concho Valley Solar Generation Interconnection Agreement to be effective 9/28/2020.

Filed Date: 10/1/20.

Accession Number: 20201001–5099.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER21–6–000.

Applicants: Muscle Shoals Solar, LLC.

Description: Baseline eTariff Filing: baseline new to be effective 12/1/2020.

Filed Date: 10/1/20.

Accession Number: 20201001–5196.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER21–7–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Notice of Cancellation of ICSA No. 3267; Queue No. O09 to be effective 8/28/2020.

Filed Date: 10/1/20.

Accession Number: 20201001–5200.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER21–8–000.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: § 205(d) Rate Filing: 2020–10–01_NSPW–NWEC-Emergency Tie-Luck-165–0.0.0 to be effective 10/2/2020.

Filed Date: 10/1/20.

Accession Number: 20201001–5204.

Comments Due: 5 p.m. ET 10/22/20.

Docket Numbers: ER21–9–000.

Applicants: Henrietta D Energy Storage LLC.

Description: Baseline eTariff Filing: baseline new to be effective 12/1/2020.

Filed Date: 10/1/20.

Accession Number: 20201001–5205.

Comments Due: 5 p.m. ET 10/22/20.

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: October 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–22148 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5737–007]

Santa Clara Valley Water District; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by Santa Clara Valley Water District to draw down the Anderson Reservoir to deadpool at the Anderson Dam Project No. 5737. Anderson Dam is located on Coyote Creek in Santa Clara County, California.

An environmental assessment (EA) has been prepared as part of staff's review of the proposal.[1] The EA

[1] On July 16, 2020, the Council on Environmental Quality (CEQ) issued a final rule, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* (Final Rule, 85 FR 43 304), which was effective as of September 14, 2020; however, the NEPA review of this project was in process at that time and was prepared pursuant to CEQ's 1978 NEPA regulations.

contains Commission staff's analysis of the probable environmental effects of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–5737) in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–865.

Any comments should be filed within 30 days from the issuance date of this notice. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. Paper filings made using the U.S. Postal Service should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–5737–007. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Dated: October 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22161 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL17–89–000; EL19–60–000]

American Electric Power Service Corporation v. Midcontinent Independent System Operator, Inc. Southwest Power Pool, Inc.; City of Prescott, Arkansas v. Southwestern Electric Power Company Midcontinent Independent System Operator, Inc.; Notice of Technical Conference

By order dated August 27, 2020,[1] the Commission directed Commission staff to convene a technical conference regarding issues raised in these dockets about the extent of overlapping congestion charges assessed on pseudo-tie transactions at the Midcontinent Independent System Operator, Inc. (MISO)/Southwest Power Pool, Inc. (SPP) interface and possible measures that could be taken to eliminate any such overlapping charges. Take notice that Commission staff will hold this technical conference remotely, as further described below, on Tuesday, November 10, 2020, beginning at 9:00 a.m. (Eastern Time). Commissioners may participate in the technical conference.

The conference will include discussions between Commission staff, MISO, SPP, American Electric Power Service Corporation, and the City of Prescott, Arkansas. These parties should be prepared to discuss the record in this proceeding, particularly the questions posed in the August 2020 Further Briefing Order and the briefs responding thereto. If time permits, there may be an opportunity for attendees to the technical conference to submit questions for discussion among the parties during the technical conference. Following the technical conference, parties to these proceedings may submit written post-technical conference comments on or before December 8, 2020, which will be included in the formal record of the proceeding.

Further details of this technical conference, including an agenda, will be provided in a supplemental notice after receipt of the briefs directed in the August 2020 Further Briefing Order. Procedures to be followed at the technical conference and any changes to the proposed agenda will be announced by staff at the opening of the technical conference. The technical conference will be transcribed.

[1] *Am. Elec. Power Serv. Corp.* v. *Midcontinent Indep. Sys. Operator, Inc.,* 172 FERC ¶ 61,163 (2020) (August 2020 Further Briefing Order).

The technical conference is open to the public. Representatives of those parties identified above and other individuals wishing to attend the technical conference must register no later than noon on October 30, 2020, at the following link: *https://ferc.webex.com/ferc/onstage/g.php?MTID=ea7efc32ce32813a883c638047dce4471.* Information on joining the technical conference will be posted on the Events Calendar on the Commission's website available at *https://www.ferc.gov/news-events/events.*

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact Yasmine Jamnejad, *yasmine.jamnejad@ferc.gov* for technical information, and Colin Beckman, *colin.beckman@ferc.gov,* for legal information. For information related to logistics, please contact Sarah McKinley, 202–502–8368, *sarah.mckinley@ferc.gov.*

Dated: October 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22160 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF20–10–000]

Western Area Power Administration; Notice of Filing

Take notice that on September 29, 2020, Western Area Power Administration submitted tariff filing: Extension of Western Area Power Administration Formula Rates for Central Arizona Project Transmission Service—Rate Order No. WAPA–193 to be effective 1/1/2021.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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.

Comment Date: 5:00 p.m. Eastern Time on October 29, 2020.

Dated: October 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–22150 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9003–011]

Northern States Power Company; Notice of Application for Amendment of Exemption, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application non-capacity amendment of exemption.

b. *Project No.:* 9003–011.

c. *Date Filed:* August 31, 2020.

d. *Exemptee:* Northern States Power Company.

e. *Name of Project:* Riverdale Hydroelectric Project.

f. *Location:* The project is located on the Apple River in St. Croix County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Exemptee Contact:* Matthew Miller, Xcel Energy, 1414 West Hamilton Avenue, P.O. Box 8, Eau Claire, WI 54702–0008, (715) 737–1353, *matthew.j.miller@xcelenergy.com.*

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov*

j. *Deadline for filing comments, interventions, and protests Deadline for filing comments, motions to intervene, and protests:* November 2, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–9003–011. Comments emailed to Commission staff are not considered part of the Commission record. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to rehabilitate the project's spillway gates, spillway apron, and the upstream and downstream right embankments. The improvements are needed to increase spillway capacity and stabilize the right embankment. The improvements are required by the Commission's Division of Dam Safety Chicago Regional Office.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list

prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: October 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22157 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–528–000]

Stingray Pipeline Company, L.L.C; Notice of Application

Take notice that on September 25, 2020, Stingray Pipeline Company, L.L.C. (Stingray), 1300 Main Street, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting authorization to abandon by sale certain facilities (WC 509 System) located in federal waters offshore Louisiana in the Gulf of Mexico to Triton Gathering LLC (Triton). Specifically, Stingray proposes to abandon by sale to Triton: (1) The 22-Inch East Lateral, consisting of 59.59 miles of 20- and 22-inch-diameter pipeline; (2) the 30-Inch West Lateral, consisting of 75.76 miles of 16-, 18-, 24-, and 30-inch-diameter pipeline; (3) the 16-Inch South Lateral, consisting of 37.63 miles of 16-inch-diameter pipeline; (4) the West Cameron Block 509 Complex; (5) the High Island Block A330 and Garden Banks 191 Platforms; and (6) various receipt and delivery interconnects. Stingray also requests a determination that the WC 509 System to be acquired by Triton will be non-jurisdictional gathering facilities pursuant to section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning Stingray's application may be directed to Blair Lichtenwalter, Senior Director of Certificates, Stingray Pipeline Company, L.L.C., 1300 Main Street, Houston, Texas 77002, by telephone at (713) 989–2605, or by email at *blair.lichtenwalter@energytransfer.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on October 20, 2020.

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

Dated: September 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22163 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–529–000]

Stingray Pipeline Company, L.L.C.; Notice of Application

Take notice that on September 25, 2020, Stingray Pipeline Company, L.L.C. (Stingray), 1300 Main Street, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by sale to Triton Gathering LLC: (1) 103 miles of 36-inch-diameter pipeline; (2) the 8,500 horsepower CS 701; (3) the West Cameron 148 Platform; and (4) various receipt and delivery point interconnections and appurtenances, all located onshore in Cameron Parish, Louisiana and offshore Louisiana in the Gulf of Mexico. Further, if the abandonment is granted, Stingray requests authorization to abandon: (1) Its NGA section 7 certificate of public convenience and necessity for the acquisition, construction, and operation of its pipeline system; (2) its Part 157, Subpart F blanket certificate; and (3) its Part 284, Subpart G blanket certificate. Stingray also requests that its FERC Gas Tariff, Fifth Revised Volume No. 1, including all rate schedules therein, be cancelled, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning Stingray's application may be directed to Blair Lichtenwalter, Senior Director of Certificates, Stingray Pipeline Company, L.L.C., 1300 Main Street, Houston, Texas 77002, by telephone at (713) 989–2605, or by email at *blair.lichtenwalter@energytransfer.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on October 20, 2020.

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

Dated: September 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22165 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–486–000]

Tuscarora Gas Transmission Company; Notice of Schedule for Environmental Review of the Tuscarora Xpress Project

On June 24, 2020, Tuscarora Gas Transmission Company (Tuscarora) filed an application in Docket No. CP20–486–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) and 7(b) of the Natural Gas Act to construct, replace, and operate certain interstate natural gas transmission pipeline facilities. The proposed project known as the Tuscarora Xpress Project (Project), seeks to increase the certificated capacity of its natural gas pipeline by 15,000 dekatherms per day from Malin, Oregon to the Wadsworth Compressor Station in Washoe County, Nevada.

On July 7, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—February 8, 2021
90-day Federal Authorization Decision Deadline—May 9, 2021

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Tuscarora proposes to replace and upgrade an existing reciprocating compressor unit (and building) and construct a new skid-mounted compressor unit at the same location within the existing Wadsworth Compressor Station in Washoe County, Nevada. Additionally, Tuscarora would upgrade an existing meter, replace the existing meter bypass line with a new meter piping run, and install a new meter within the existing compressor station site. According to Tuscarora, the Project is necessary to meet the growing market demand for natural gas in this area.

Background

On August 4, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Tuscarora XPress Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission did not receive any environmental comments.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP20–486), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22159 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP19–1353–010.

Applicants: Northern Natural Gas Company.

Description: Compliance filing 20200918 Compliance of Settlement to be effective 1/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5144.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1123–001.

Applicants: Millennium Pipeline Company, LLC.

Description: Compliance filing RAM 2020—Periodic RAM Adj—Compliance Filing to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5113.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1160–001.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Tariff Amendment: Initial Rate Filing—Southeastern Trail Project—Amendment to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5129.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1238–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various shippers eff 10–1–2020) to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5005.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1239–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 53096 to Exelon 53144) to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5006.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1240–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20200930 Negotiated Rate to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5020.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1241–000.

Applicants: Dominion Energy Cove Point LNG, LP.

Description: § 4(d) Rate Filing: DECP—2020 PVIC Rate New Provision to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5021.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1242–000.

Applicants: ANR Pipeline Company.

Description: § 4(d) Rate Filing: WPL NC ETS Agreement to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5022.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1243–000.

Applicants: Trunkline Gas Company, LLC.

Description: § 4(d) Rate Filing: Fuel Filing on 9–30–20 to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5026.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1244–000.

Applicants: Southwest Gas Storage Company.

Description: § 4(d) Rate Filing: Fuel Filing on 9–30–20 to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5027.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1245–000.

Applicants: Dominion Energy Transmission, Inc.

Description: § 4(d) Rate Filing: DETI—2020 Annual EPCA to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5029.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1246–000.

Applicants: Dominion Energy Transmission, Inc.

Description: § 4(d) Rate Filing: DETI—2020 Annual TCRA to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5033.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1247–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2020 P2/AltP2 Rates, 10-Year 2010 Expansion to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5046.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1248–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2020 September Negotiated Rate Agreement Amendment to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5047.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1249–000.

Applicants: LA Storage, LLC.

Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements 10.1.20 to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5048.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1250–000.

Applicants: National Fuel Gas Supply Corporation.

Description: § 4(d) Rate Filing: GT&C Section 42 (PS/GHG) Tracker Filing to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5050.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1251–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: § 4(d) Rate Filing: Fuel Filing on 9–30–20 to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5052.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1252–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Fuel Filing on 9–30–20 to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5069.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1253–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Pipeline Safety and Greenhouse Gas Cost Adjustment Mechanism—2020 to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5070.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1255–000.

Applicants: Dominion Energy Carolina Gas Transmission.

Description: § 4(d) Rate Filing: DECG—2020 FRQ and TDA Report to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5080.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1256–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (APS Oct 2020) to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5104.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1257–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Non-Conforming Agreement (MRC Permian) to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5110.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1258–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (BP Energy #211039–TF1CIG) to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5114.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1259–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Oct 2020 to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5117.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1260–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Atlantic Bridge In-Service NRA Filing to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5118.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1261–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Atlantic Bridge In-Service NC Filing to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5120.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1262–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: § 4(d) Rate Filing: MNUS FRQ 2020 Filing to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5163.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1263–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Non-Conforming Agreements Filing (Sempra) to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5184.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1264–000.

Applicants: Young Gas Storage Company, Ltd.

Description: Compliance filing Operational Purchase and Sale Report.

Filed Date: 9/30/20.

Accession Number: 20200930–5186.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1265–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2020–09–30 Negotiated Rate Agreement Amendments to be effective 10/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5193.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP20–1266–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Compliance filing Ozark Gas Revision to Non-Conforming Agreements to be effective 11/1/2020.

Filed Date: 9/30/20.

Accession Number: 20200930–5194.

Comments Due: 5 p.m. ET 10/13/20.

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: October 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–22149 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10853–023]

Otter Tail Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Capacity Amendment of License.

b. *Project No.:* 10853–023.

c. *Date Filed:* September 3, 2020.

d. *Applicant:* Otter Tail Power Company.

e. *Name of Project:* Otter Tail River Hydroelectric Project.

f. *Location:* The project is located on the Otter Tail River in Otter Tail County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Darin Solberg, Plant Superintendent, Otter Tail Power Company, 1012 Water Plant Road, Fergus Falls, MN 56537; telephone (218) 739–8157 and email *DSolberg@otpco.com.*

i. *FERC Contact:* Linda Stewart, (202) 502–8184, *linda.stewart@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–10853–023. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

k. *Description of Request:* Otter Tail Power Company (licensee) proposes to change the transmission line route at the Hoot Lake Development. As currently licensed, a 200-foot-long, 2.4-kilovolt (kV) transmission line connects the Hoot Lake powerhouse to the licensee's adjacent fossil-fueled generating plant. In anticipation of retiring the fossil-fueled generating plant, the licensee proposes to establish a new transmission line route for the power generated at the Hoot Lake powerhouse. Under the amendment proposal, the licensee would construct a new 13.8/2.4-kV generator step-up transformer adjacent to the powerhouse and a new approximately 150-foot-long, 13.8-kV underground transmission line that would extend from the new transformer to an existing power pole. During the construction of the proposed underground transmission line, the licensee would also modify the routing of the local power supply and the fiberoptic communication lines at the project. The licensee notes that the proposed activity would occur on previously disturbed land, which the licensee owns.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments

filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting, or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: October 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22158 Filed 10–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Agency Information Collection Extension

AGENCY: Western Area Power Administration, DOE.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of Western Area Power Administration's (WAPA) Applicant Profile Data (APD), OMB Control Number 1910–5136. The proposed collection is necessary for the proper performance of WAPA's functions. WAPA markets a limited amount of Federal hydropower. Due to the high demand for WAPA's power, WAPA needs the ability to collect information under the information collection request in order to evaluate who may receive an allocation of Federal power pursuant to specific marketing plans. This APD public process only determines the information WAPA will collect in its information collection request. The actual allocation of Federal power will be conducted through a separate marketing plan process outside the scope of this APD process.

DATES: Comments regarding this collection must be received on or before November 6, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4718.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Erin Green, Power Marketing and Energy Services Specialist, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228, telephone (720) 962–7016, or email *egreen@wapa.gov.* The proposed APD form is available on WAPA's website at *www.wapa.gov/PowerMarketing/Pages/applicant-profile-data.aspx.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5136; (2) *Information Collection Request Title:* Western Area Power Administration (WAPA) Applicant Profile Data; (3) *Type of Review:* Renewal; (4) *Purpose:* WAPA is collecting—and will continue to collect—the data under its APD to properly perform its function of marketing a limited amount of Federal hydropower. The information WAPA collects is voluntary. Due to the high demand for WAPA's power and limited amount of available power, WAPA will use the information collected in the APD—and has used the information collected under the current OMB-approved control number—pursuant to its marketing plans, to determine an applicant's eligibility for an allocation of Federal power. As a result, the information WAPA collects under its APD is both necessary and useful. WAPA notes the Paperwork Reduction Act is the process whereby WAPA obtains approval from OMB to collect information from the public. It is a legal requirement WAPA must comply with before requesting an interested party submit an application for power. The Paperwork Reduction Act process is not the process in which interested parties apply for a new allocation of Federal power. The allocation of power from WAPA is outside the scope of this process and is completed in a separate marketing plan process by each WAPA region, when required; (5) *Annual Estimated Number of Respondents:* 33.333; (6) *Annual Estimated Number of Total Responses:* 33.333; (7) *Annual Estimated Number of Burden Hours:* 250; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $32,046.98.

Statutory Authority: Reclamation Laws are a series of laws arising from the Desert Land Act of 1877 and include, but are not limited to: The Desert Land Act of 1877, Reclamation Act of 1902, Reclamation Project Act of 1939, and the Acts authorizing each individual project such as the Central Valley Project Authorizing Act of 1937. *See* Ch. 107, 19 stat. 377 (1877), Ch. 1093, 32 Stat. 388 (1902), Ch. 418, 53 Stat. 1187 (1939), Ch. 832, 50 Stat. 844, 850 (1937), all as amended and supplemented. The Reclamation Act of 1902 established the Federal reclamation program. *See* Ch. 1093, 32 Stat. 388 (1902), as amended and supplemented. The basic principle of the Reclamation Act of 1902 was that the United States, through the Secretary of the Interior, would build and operate irrigation works from the proceeds of public land sales in the sixteen arid Western states (a seventeenth was later added). The Reclamation Project Act of 1939 expanded the purposes of the reclamation program and specified certain terms for contracts that the Secretary of the Interior enters into to furnish water and power. *See* Ch. 418, 53 Stat. 1187 (1939), as amended and supplemented. In 1977, the Department of Energy Organization Act transferred the power marketing functions of the Department of the Interior to the Secretary of Energy, acting by and through a separate Administrator for WAPA. *See* 42 U.S.C. 7152(a)(1)(D). Section 5 of the Flood Control Act of 1944 is read in pari materia with Reclamation Laws with respect to WAPA. *See* Act of December 22, 1944, Ch. 665, 58 Stat. 887, as amended and supplemented.

Signing Authority

This document of the Department of Energy was signed on September 30, 2020, by Mark A. Gabriel, Administrator, Western Area Power Administration, 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 October 2, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–22168 Filed 10–6–20; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0004; FRS 17099]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 7, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0004.

Title: Sections 1.1307 and 1.1311, Guidelines for Evaluating the Environmental Effects of Radiofrequency Exposure.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal government.

Number of Respondents and Responses: 335,441 Respondents; 335,441 Responses.

Estimated Time per Response: 0.0833 hours (5 minutes) – 20 hours.

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this Information collection is contained in 47 U.S.C. 154(i), 302, 303, 303(r), and 307.

Total Annual Burden: 41,997 hours.

Total Annual Costs: $2,933,431.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is a minimal exemption from the Freedom of Information Act (FOIA), *5 U.S.C. 552(b)(4),* and *47 CFR 0.459* of the Commission's rules, that is granted for trade secrets and privileged or confidential commercial or financial information, which may be submitted to the Commission as part of the documentation of test results. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance.

This information collection is a result of responsibility placed on the FCC by the National Environmental Policy Act (NEPA) of 1969. NEPA requires that each federal agency evaluate the impact of ''major actions significantly affecting the quality of the human environment.'' It is the FCC's opinion that this is the most efficient and reasonable method of complying with NEPA with regard to the environmental issue of radiofrequency radiation from FCC-regulated transmitters.

The December 2019 RF Exposure Second Report and Order, ET Docket Nos. 03–137 and 13–184, FCC 19–126, amended §§ 1.1307, 2.1091 and 2.1093 requiring approval by OMB under the Paperwork Reduction Act (85 FR 18131, April 1, 2020). The Commission subsequently stated that the amendments to these rules affects information collections under the Paperwork Reduction Act. 85 FR 33578 (June 2, 2020). Revision to information collection effected by amendments to §§ 2.1091 and 2.1093 is reported separately under OMB Information Collection 3060–0057.

In amended § 1.1307, the Commission revised its implementing rules to reflect modern technology and current uses. The Commission streamlined the criteria for determining when an applicant or licensee is exempt from our radio frequency (RF) exposure evaluation criteria by replacing service-based exemptions with a formula-based approach. For those applicants and licensees who do not qualify for an exemption, the Commission provided more flexibility to establish compliance with our RF exposure limits. The Commission also specified methods that RF equipment operators can use to mitigate the risk of excess exposure, both to members of the public and trained workers (such as training, supervision, and signage). The amended rules provide more efficient, practical, and consistent RF exposure evaluation procedures and mitigation measures to help ensure compliance with the existing RF exposure limits.

Most of the changes to § 1.1307 represent clarification or simplification of existing requirements and are not expected to significantly increase or decrease the estimated burden to respondents or to the Federal government. To address components of the amended requirements that were not included in previous burden estimates, isolated revisions were made to the burden estimates as summarized in the supporting statement of the Information Collection. To update burden estimates based on most recently available data, the Commission also adjusted the total number of respondents/responses, the total annual hourly burden, and the

total annual costs from the previous estimates, based on licensing data for calendar year 2019.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–21492 Filed 10–6–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE–IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations. The meeting is open to the public. Out of an abundance of caution related to current and potential coronavirus developments, the public's means to observe this Advisory Committee on Economic Inclusion meeting will be via a Webcast live on the internet. In addition, the meeting will be recorded and subsequently made available on-demand approximately two weeks after the event. To view the live event, visit *http://fdic.windrosemedia.com.* To view the recording, visit *http://fdic.windrosemedia.com/index.php.old?category=Advisory+Committee+on+Economic+Inclusion+(Come-IN).* If you require a reasonable accommodation to participate, please contact *DisabilityProgram@fdic.gov* or call 703–562–2096 to make necessary arrangements.

DATES: Thursday, October 22, 2020, from approximately 1:00 p.m. to 5:00 p.m., EDST.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will focus on updates from the committee members about key challenges facing their communities or organizations, results of the 2019 Household Survey of the Underbanked, and other various reports relating to the financial condition of and challenges facing households during the pandemic. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: This meeting of the Advisory Committee on Economic Inclusion will be Webcast live via the internet *http://fdic.windrosemedia.com.* For optimal viewing, a high-speed internet connection is recommended.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 2, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–22143 Filed 10–6–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201348.

Agreement Name: APL/Swire Guam, Saipan—S. Korea, Japan Slot Charter Agreement.

Parties: American President Lines, LLC and The China Navigation Co. Pte. Ltd. d/b/a Swire Shipping.

Filing Party: Patricia O'Neill, American President Lines, LLC.

Synopsis: The agreement authorizes APL to charter space to SWIRE in the trade between ports in Guam, Saipan, South Korea and Japan.

Proposed Effective Date: 9/29/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/34502.

Agreement No.: 201349.

Agreement Name: World Shipping Council Agreement.

Parties: COSCO SHIPPING Lines Co., Ltd., COSCO SHIPPING Lines (Europe) Gmbh; Orient Overseas Container Line Ltd., and OOCL (Europe) Limited (acting as a single party); CMA CGM S.A., APL Co. Pte. Ltd., American President Lines, LLC and ANL Singapore Pte. Ltd. (acting as a single party); Crowley Caribbean Services, LLC and Crowley Latin America Services, LLC (acting as a single party); Evergreen Marine Corporation (Taiwan) Ltd.; Hapag-Lloyd AG; HMM Company Limited; Independent Container Line, Ltd.; Kawasaki Kisen Kaisha; Maersk A/S and Hamburg Sud (acting as a single party); MSC Mediterranean Shipping Company SA; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha; Ocean Network Express Pte. Ltd.; Wallenius Wilhelmsen Ocean AS; Wan Hai Lines Ltd. and Wan Hai Lines (Singapore) Pte. Ltd.; Yang Ming Marine Transport Corp; and Zim Integrated Shipping Services, Ltd.

Filing Party: Robert Magovern; Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to discuss, communicate, and cooperate on environmental and climate-related matters, legal and regulatory matters, and industry positions to be taken with respect to international treaties, governmental requirements, and safety and security matters.

Proposed Effective Date: 11/15/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/34503.

Dated: October 2, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–22146 Filed 10–6–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 20–06]

Temporary Exemption from Certain Service Contract Requirements

Served: October 1, 2020.

By the Commission: Michael A. KHOURI, *Chairman,* Rebecca F. DYE, Daniel B. MAFFEI, Louis E. SOLA, Carl W. BENTZEL, *Commissioners.*

Order Granting Extension of Exemption

Under 46 CFR 530.8(a)(1) carriers must file original service contracts (as opposed to an amendment) with the Commission ''before any cargo moves pursuant to that service contract.'' In addition, § 530.8(b) requires that each original contract include, among other terms, an effective date that is no earlier than the filing date. *See* §§ 530.3(i) (defining ''effective date'' for original service contracts and amendments); 530.8(b)(8)(i) (requiring every service contract to include its effective date). Similarly, § 530.14(a) provides that ''[p]erformance under an original

service contract may not begin before the day it is effective and filed with the Commission.'' [1]

On April 27, 2020, the Federal Maritime Commission published an Order to temporarily allow parties to file service contracts up to 30 days after they take effect. The Order made the relief effective immediately and lasting through December 31, 2020. The Commission noted in its Order that it might consider extending this exemption, as necessary, to address the continuing effects of the COVID–19 pandemic. In the interest of providing certainty and stability to supply chain stakeholders, the Commission believes it is necessary to extend this exemption until June 1, 2021.

The temporary exemption was designed to help relieve coronavirus disease 2019 (COVID–19) impacts to the supply chain. COVID–19 has placed increased stresses and burdens on carriers and their customers. As noted in the Order of April 27, 2020, an increasing number of businesses have been working remotely as a result of social distancing guidance and stay-at-home orders. The Commission understands that for some entities, this situation, combined with other COVID–19–related disruptions to commercial operations, has made complying with service contract filing requirements difficult. This situation continues to exist and may continue to affect business operations.

The benefits of relief from service contract filing requirements were identified by the Fact Finding 29 Supply Chain Innovation Teams working under the direction of the Fact Finding Officer.[2] A unifying theme in the initial meetings of the Supply Chain Innovation Teams was that service contract negotiations are being disrupted for a variety of COVID–19 related causes. Teleworking arrangements complicate negotiations between carriers and shippers and that will continue to be true into the 2021 contract negotiation season. Additionally, some businesses continue to be technologically challenged to file service contracts from locations other than their offices. Individual shippers identified the importance for supply chain efficiency of relief from service contract filing and regulatory certainty upon which to make operational changes.

Based on Fact Finding 29's findings and recommendations, stakeholder interest, and in light of ongoing challenges presented by the pandemic and necessary changes to business operations, the Commission continues to believe that flexibility in service contract filing requirements provided by extension of the exemption will allow industry to continue adapting to market conditions, while still providing the Commission information necessary to assure competition and integrity for America's ocean supply chain.

This extension is also temporary and will remain in effect only until June 1, 2021.

Exemptions from the requirements of Part 530 are governed by 46 CFR 530.13(b). Under this authority, the Commission may exempt any specified activity of persons subject to the Shipping Act from the requirements of Part 530 if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. § 530.13(b) (incorporating 46 U.S.C. 40103(a) and 46 CFR 502.10, 502.92).

The Commission has previously allowed for exemptions from the service contract regulations in exigent circumstances where the exemption meets the criteria in 46 U.S.C. 40103(a). *See Pet. of Maersk Line A/S for an Exemption from 46 CFR 530.8,* Pet. No. P1–17 (FMC July 19, 2017); *Petition of COSCO Container Lines Company Ltd.,* 34 S.R.R. 97 (FMC 2016); *Petition of Crowley Caribbean Servs., LLC,* 33 S.R.R. 1461 (FMC 2016); *Petition of Compañía Sud Americana de Vapores S.A.,* 33 S.R.R. 934 (FMC 2015); *Petition of Hanjin Shipping Co., Ltd.,* 31 S.R.R. 1080 (FMC 2009).

Based on experience with the temporary exemption currently in place, the Commission concludes that extending the temporary exemption from certain requirements for original service contracts in §§ 530.3, 530.8, and § 530.14 until June 1, 2021, subject to certain conditions, will continue to reduce the filing burdens on the industry and will not result in a substantial reduction in competition or be detrimental to commerce. This exemption extension remains subject to the condition that original service contracts continue to be filed with the Commission. As is the case for service contract amendments, however, that filing may now be delayed up to 30 days after the effective date. The Commission has determined that these conditions will minimize any potential negative effects on competition or commerce.

Although the Commission's Rules of Practice and Procedure normally require notice and an opportunity for a hearing be afforded to interested parties (including publication in the **Federal Register** of a notice of the proposed exemption and request for comments), *see* 46 CFR 502.92(c)–(d); 530.13(b) (cross-referencing § 502.92), the Commission may waive these requirements for regulatory exemptions to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires. *See* 46 CFR 502.10; 530.13(b) (cross-referencing § 502.10). Given the immediate need for regulatory relief in light of the COVID–19 pandemic and its effects on commercial operations, the Commission has determined that waiving the notice and hearing requirements in § 502.92 is necessary to prevent undue hardship and is required for the expeditious conduct of Commission business.

Therefore it is ordered, that an extension of the temporary exemption from the requirements of 46 CFR 530.3(i); 530.8(a)(1), (b)(8)(i); and 530.14(a) for original service contracts is GRANTED, provided that:

1. Authorized persons must file with the Commission, in the manner set forth in appendix A of 46 CFR part 530, a true and complete copy of every original service contract no later than thirty (30) days after any cargo moves pursuant to that service contract;

2. Every original service contract filed with the Commission must include the effective date, which may be no more than thirty (30) calendar days prior to the filing date with the Commission; and

3. Performance under an original service contract may not begin until the day it is effective, provided that the service contract is filed with the Commission no later than thirty (30) calendar days after the effective date.

It is further ordered, that this temporary exemption will remain in effect until June 1, 2021.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2020–22106 Filed 10–6–20; 8:45 am]

BILLING CODE 6730–02–P

[1] In contrast, the Commission's regulations provide more flexibility to service contract amendments, which can be filed within 30 days after the amendment's effective date. *See* §§ 530.3(i); 530.8(a)(2); 530.8(b)(8)(i); 530.14(a).

[2] The Commission initiated Fact Finding No. 29, International Ocean Transportation Supply Chain Engagement, to identify operational solutions to cargo delivery system challenges related to Coronavirus–19.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval,

pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 6, 2020.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Louise Bancshares, Inc., Louise, Texas;* to acquire Dilley State Bank, Dilley, Texas.

Board of Governors of the Federal Reserve System, October 2, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–22171 Filed 10–6–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than November 5, 2020.

A. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *LendingClub Corporation, San Francisco, California;* to become a bank holding company by acquiring voting shares of Radius Bancorp, Inc., and thereby indirectly acquire voting shares of Radius Bank, both of Boston, Massachusetts, upon Radius Bank's conversion from a federal savings bank to a national bank.

In connection with this application, LendingClub Corporation, directly and through its wholly-owned subsidiaries, LendingClub Warehouse I, LLC, LendingClub Warehouse II, LLC, and Consumer Loan Underlying Bond Depositor, LLC, all of San Francisco, California, to engage de novo in extending credit and servicing loans and activities related to extending credit pursuant to § 225.28(b)(1) and (b)(2) of Regulation Y, respectively. In addition, LendingClub Corporation to engage de novo in data processing activities pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–22092 Filed 10–6–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0024; Docket No. 2020–0053; Sequence No. 10]

Information Collection; Buy American, Trade Agreements, and Duty-Free Entry

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning Buy American, trade agreements, and duty-free entry. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through November 30, 2020. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by December 7, 2020.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short

comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite Information Collection 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0024, Buy American, Trade Agreements, and Duty-Free Entry.

B. Need and Uses

This clearance covers the information that an offeror must submit in response to the requirements of the provisions and clauses in Federal Acquisition Regulation (FAR) part 25 that relate to the following:

* The Buy American statute (41 U.S.C. chapter 83 and Executive Order 10582).

* The Trade Agreements Act (19 U.S.C. 2501–2515), including the World Trade Organization Government Procurement Agreement and various free trade agreements.

* The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act).

* Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

a. 52.225–2, Buy American Certificate. This provision requires the offeror to identify in its proposal supplies that do not meet the definition of domestic end product.

b. 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate. This provision requires a separate list of foreign products that are eligible under a trade agreement, and a list of all other foreign end products.

c. 52.225–6, Trade Agreements Certificate. This provision requires the offeror to certify that all end products are either U.S.-made or designated country end products, except as listed in paragraph (b) of the provision. Offerors are not allowed to provide other than a U.S.-made or designated country end product, unless the requirement is waived.

d. 52.225–8, Duty-Free Entry. This clause requires contractors to notify the contracting officer when they purchase foreign supplies, in order to determine whether the supplies should be duty-free. The notice shall identify the foreign supplies, estimate the amount of duty, and the country of origin. The contractor is not required to identify foreign supplies that are identical in nature to items purchased by the contractor or any subcontractor in connection with its commercial business, and segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

e. Construction provisions and clauses:

- 52.225–9, Buy American—Construction Materials
- 52.225–10, Notice of Buy American Requirement—Construction Materials
- 52.225–11, Buy American-Construction Materials Under Trade Agreements
- 52.225–12, Notice of Buy American Requirement—Construction Materials under Trade Agreements
- 52.225–21, Required Use of American Iron, Steel and Manufactured Goods—Buy American—Construction Materials
- 52.225–23, Required Use of American Iron, Steel and Manufactured Goods—Buy American—Construction Materials Under Trade Agreements

The listed provisions and clauses provide that an offeror or contractor requesting to use foreign construction material due to unreasonable cost of domestic construction material shall provide adequate information to permit evaluation of the request.

C. Annual Burden

Respondents: 8,771.
Total Annual Responses: 43,891.
Total Burden Hours: 40,738.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–22151 Filed 10–6–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1137]

Investigational COVID–19 Convalescent Plasma; Guidance for Industry; Withdrawal of Guidance; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that published in the **Federal Register** of September 21, 2020. The document announced the withdrawal of a final guidance for industry entitled ''Investigational COVID–19 Convalescent Plasma,'' which was issued in April 2020 and updated in May 2020. FDA withdrew the guidance because the Agency issued a new guidance for industry of the same title. The document was published with the incorrect docket number for the guidance for industry that was withdrawn. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Shruti Modi, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 18, 2020 (85 FR 593120), appearing on page 59320 in FR Doc. 2020–20801, the following correction is made:

On page 59320, in the third column, the Docket No. ''FDA–2020–D–1825'' is corrected to read ''FDA–2020–D–1137.''

Dated: October 1, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22142 Filed 10–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1720]

Labeling of Foods Comprised of or Containing Cultured Seafood Cells; Request for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information.

SUMMARY: The Food and Drug Administration (FDA or we) is requesting information pertaining to the labeling of foods comprised of or containing cultured seafood cells. Foods comprised of or containing cultured seafood cells are being developed and may soon enter the marketplace. Therefore, we intend to use information and data resulting from this notice to determine what type(s) of action, if any, we should take to ensure that these foods are labeled properly.

DATES: Submit either electronic or written comments on the notice by March 8, 2021.

ADDRESSES: You may submit comments and information as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 8, 2021]. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 8, 2021. 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–1720 for ''Labeling of Foods Comprised of or Containing Cultured Seafood Cells; Request for Information.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 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.'' We will review this copy, including the claimed confidential information, in our 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: Andrea Krause, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

A. FDA Jurisdiction Over Cultured Animal Cells

Efforts are underway to develop various food products comprised of or containing cultured animal cells, including cells from livestock, poultry, and seafood [1] species, using a process often referred to as animal cell culture technology. Animal cell culture technology involves the controlled growth of animal cells, their subsequent differentiation into various cell types, and their harvesting and processing into food. Once produced, the harvested cells could potentially be processed into or combined with other foods and marketed in the same, or similar, manner as conventionally produced meat, poultry, and seafood. In this document we refer to these foods as ''foods comprised of or containing cultured animal cells.'' Many companies, both domestic and foreign, are developing products using this technology. Given these technological advances, it is appropriate to consider what actions, if any, may be needed to ensure the safe production and accurate labeling of these products.

FDA will be involved in the regulation of foods generated by animal cell culture technology consistent with our current legal authorities. We are responsible for implementing and enforcing the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301 *et seq.*), the Public Health Service Act (42 U.S.C. 201 *et seq.*), and the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*). In carrying out our responsibilities under these laws, we maintain responsibility for ensuring that food is safe and not misbranded.

B. Relevant Misbranding Provisions Under the FD&C Act

This document primarily pertains to representations about the identity of foods comprised of or containing cultured seafood cells. Such representations include the name of the food and descriptions about its nature, source, or characteristics. There are

[1] The use of the term ''seafood'' refers to all fish (freshwater and saltwater) and other seafood species (*e.g.,* molluscs, crustaceans) under FDA jurisdiction.

several provisions in the FD&C Act under which food may be misbranded with respect to representations about identity. In general, the representations made or suggested must not cause the labeling to be misleading, either affirmatively or by omission of material facts (21 U.S.C. 343(a)(1) and 321(n)). The FD&C Act prohibits offering a food for sale under the name of another food (21 U.S.C. 343(b)). It requires the labels of non-standardized foods to bear the common or usual name of the food if such a name exists (21 U.S.C. 343(i)(1)). Common or usual names are generally established by common usage, though in some cases may be established by regulation pursuant to the principles in 21 CFR 102.5(a)–(c) (see 21 CFR 102.5(d)). In the absence of a common or usual name or other name established by federal law or regulation, food sold in packaged form is required to be labeled with an accurate description of the food or a fanciful name commonly used by the public (§ 101.3(b)(3) (21 CFR 101.3(b)(3))). Such description or name must not be false or misleading (21 U.S.C. 343(a)(1)) and is referred to as the statement of identity (§ 101.3(b)). Finally, the FD&C Act provides that words or statements required to appear on the label or labeling be in such terms as to render them likely to be understood by the ordinary individual under customary conditions of purchase and use (21 U.S.C. 343(f)).

C. FDA–USDA Agreement Regarding Oversight of Human Food Produced Using Animal Cell Technology Derived From Cell Lines of USDA-Amenable Species

In November 2018, FDA and the U.S. Department of Agriculture (USDA) formally announced that they will jointly oversee the production of cultured cell food products derived from livestock and poultry (Ref. 1). On March 7, 2019, FDA and USDA signed an agreement that described each entity's intended roles with respect to the oversight of human food produced using animal cell culture technology, derived from cell lines of those species [2] covered under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) (Ref. 2). In summary, FDA will oversee the collection, growth and differentiation of livestock and poultry cells until cell harvest. A transition from FDA to USDA's Food Safety and Inspection Service oversight will occur during the cell harvest stage. USDA then will oversee the processing, packaging, and labeling of the resulting food products derived from the cultured cells of livestock and poultry. FDA will continue to regulate foods comprised of or containing cultured animal cells from other species under FDA's jurisdiction, such as seafood species other than Siluriformes fish.

In the FDA–USDA agreement, FDA and USDA have agreed to develop joint principles for product labeling and claims to ensure that products are labeled consistently and transparently.

D. Public Meetings on Animal Cell Culture Technology

Participation in public meetings is an important opportunity to share our current thinking on the science surrounding new technologies, how our regulatory framework may apply to new technology, and most importantly, to hear from the public. On July 12, 2018, we held a public meeting, ''Foods Produced Using Animal Cell Culture Technology,'' to give the public an opportunity to provide comments related to the production of foods using animal cell culture technology. In this meeting, we discussed our expected involvement in the oversight of products of cell culture technology and solicited feedback from stakeholders. Building on this effort, on October 23 to 24, 2018, USDA and FDA hosted a joint public meeting entitled, ''Joint Public Meeting on the Use of Cell Culture Technology to Develop Products Derived From Livestock and Poultry.'' This meeting presented the opportunity for FDA and USDA to hear from stakeholders about various issues, including the labeling of food products comprised of or containing cultured livestock and poultry cells.

II. Issues for Consideration and Request for Information

We invite comment in response to the questions below. Our use of the term ''cultured seafood cells'' in these questions is intended to distinguish between the foods, which are the subject of this document, and conventionally produced seafood. It is not intended to establish or suggest nomenclature for labeling purposes. The names and descriptions in food labeling should be based on consumer understanding and usage as described in section I.B.

We invite comment, particularly data and other evidence, about: (1) Names or statements of identity for foods comprised of or containing cultured seafood cells; (2) consumer understanding of terms that have been suggested for the names or statements of identity of foods comprised of or containing cultured seafood cells; and (3) how to assess material differences between the foods that are the subject of this document and conventionally produced foods. In responding to these questions, please identify the question by its associated letter and number (such as ''2(a)'') so that we can associate your response with a specific question.

1. Should the name or statement of identity of foods comprised of or containing cultured seafood cells inform consumers about how the animal cells were produced? Please explain your reasoning.

2. What terms should be in the name or statement of identity of a food comprised of or containing cultured seafood cells to convey the nature or source of the food to consumers? (For example, possible terms could be ''cell cultured'' or ''cell based'' or ''cell cultivated.'') Please explain your reasoning and provide any studies or data about consumer understanding of such terms.

a. How do these terms inform consumers of the nature or source of the food?

b. If foods comprised of or containing cultured seafood cells were to be labeled with the term ''culture'' or ''cultured'' in their names or statements of identity (*e.g.,* ''cell culture[d]''), would labeling differentiation be necessary to distinguish these products from other types of foods where the term ''culture'' or ''cultured'' is used (such as ''aquaculture'')? Please explain your reasoning and provide any studies or data about consumer understanding of such terms.

3. The names of many conventionally produced seafood products have been established by common usage or by statute or regulation. Names are also recommended for seafood species in *The Seafood List*.[3] In FDA's view, foods comprised of or containing cultured seafood cells are not yet in the marketplace and, therefore, do not have common or usual names established by common usage.

a. If you disagree with FDA's view, what are these names and what evidence demonstrates that the names are commonly used and understood by the American public for foods derived from cultured animal cells?

b. Should names for conventionally produced seafood products established by common usage, statute, or regulation

[2] Products made from cattle, sheep, swine, goats, and Siluriformes fish are subject to the FMIA. Products made from domesticated chickens, turkeys, ducks, geese, guineas, ratites, and squab are subject to the PPIA.

[3] *The Seafood List* provides guidance to industry about specificity in the naming of seafood sold in interstate commerce and to assist manufacturers in labeling seafood products.

be included in the names or statements of identity of food derived from cultured seafood cells? Please explain your reasoning.

c. If so, is additional qualifying language necessary? What qualifying terms or phrases would be appropriate? Please explain your reasoning.

d. Do these names, with or without qualifying language, clearly distinguish foods derived from seafood cell culture from conventionally produced seafood? Please explain your reasoning.

e. Should FDA update *The Seafood List* to include foods comprised of or containing cultured seafood cells? Please explain your reasoning.

4. Should terms that specify a certain type of seafood (such as ''fillet'' or ''steak'') be included in or accompany the name or statement of identity of foods comprised of or containing cultured animal cells?

a. Under what circumstances should these terms be used? What information would they convey to consumers? For example, would such terms convey the physical form or appearance of the food? Please explain your reasoning. Additionally, please provide any studies or data about consumer understanding of such terms when used to describe foods comprised of or containing cultured seafood cells.

b. Would these terms be misleading to consumers? Please explain your reasoning and provide any supporting studies or data.

5. When comparing conventionally produced seafood to foods comprised of or containing cultured seafood cells, what attributes (such as nutrition, taste, texture, or aroma) vary between the foods and should FDA consider to be material to consumers' purchasing and consumption decisions? Please explain your reasoning.

a. Are there other characteristics beyond nutritional attributes or organoleptic properties that may be material differences? These could relate either to cellular constituents or characteristics influenced by the cell culture production process. Please be specific in your response and explain your reasoning.

III. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, Statement from USDA Secretary Perdue and FDA Commissioner Gottlieb on the Regulation of Cell Cultured Food Products from Cell Lines of Livestock and Poultry, Nov. 16, 2018, available at *https://www.fda.gov/news-events/press-announcements/statement-usda-secretary-perdue-and-fda-commissioner-gottlieb-regulation-cell-cultured-food-products.*

2. Formal Agreement Between FDA and USDA Regarding Oversight of Human Food Produced Using Animal Cell Technology Derived from Cell Lines of USDA-amenable Species, March 7, 2019, available at *https://www.fda.gov/food/domestic-interagency-agreements-food/formal-agreement-between-fda-and-usda-regarding-oversight-human-food-produced-using-animal-cell.*

Dated: October 1, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22140 Filed 10–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1989]

Fee Rate for Using a Rare Pediatric Disease Priority Review Voucher in Fiscal Year 2021

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the fee rate for using a rare pediatric disease priority review voucher for fiscal year (FY) 2021. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to determine and collect rare pediatric disease priority review user fees for certain applications for review of human drug or biological products when those applications use a rare pediatric disease priority review voucher. These vouchers are awarded to sponsors of rare pediatric disease product applications that meet all the requirements of this program and are submitted 90 days or more after July 9, 2012, upon FDA approval of such applications. The amount of the fee for using a rare pediatric disease priority review voucher is determined each FY, based on the difference between the average cost incurred by FDA to review a human drug application designated as priority review in the previous FY, and the average cost incurred in the review of an application that is not subject to priority review in the previous FY. This notice establishes the rare pediatric disease priority review fee rate for FY 2021 and outlines the payment procedures for such fees.

FOR FURTHER INFORMATION CONTACT: Misbah Tareen, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61077A, Beltsville, MD 20705–4304, 301–796–3997.

SUPPLEMENTARY INFORMATION:

I. Background

Section 908 of FDASIA (Pub. L. 112–144) added section 529 to the FD&C Act (21 U.S.C. 360ff). In section 529 of the FD&C Act, Congress encouraged development of new human drugs and biological products for prevention and treatment of certain rare pediatric diseases by offering additional incentives for obtaining FDA approval of such products. Under section 529 of the FD&C Act, the sponsor of an eligible human drug application submitted 90 days or more after July 9, 2012, for a rare pediatric disease (as defined in section 529(a)(3)) shall receive a priority review voucher upon approval of the rare pediatric disease product application. The recipient of a rare pediatric disease priority review voucher may either use the voucher for a future human drug application submitted to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or transfer (including by sale) the voucher to another party. The voucher may be transferred repeatedly until it ultimately is used for a human drug application submitted to FDA under section 505(b)(1) of the FD&C Act or section 351(a) of the Public Health Service Act. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending on the type of application. Information regarding current PDUFA goals is available at *https://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm511438.pdf.*

The sponsor that uses a rare pediatric disease priority review voucher is entitled to a priority review of its eligible human drug application, but must pay FDA a rare pediatric disease priority review user fee in addition to any user fee required by PDUFA for the application. Information regarding the rare pediatric disease priority review

voucher program is available at: *https://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/ucm375479.htm.*

This notice establishes the rare pediatric disease priority review fee rate for FY 2021 at $1,360,879 and outlines FDA's payment procedures for rare pediatric disease priority review user fees. This rate is effective on October 1, 2020, and will remain in effect through September 30, 2021.

II. Rare Pediatric Priority Review User Fee Rate for FY 2021

Under section 529(c)(2) of the FD&C Act, the amount of the rare pediatric disease priority review user fee is determined each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred by FDA in the review of a human drug application that is not subject to priority review in the previous fiscal year.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted priority review status within this expedited timeframe. Normally, an application for a human drug or biological product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. An application that does not receive a priority designation receives a standard review. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

FDA is setting a fee for FY 2021, which is to be based on standard cost data from the previous fiscal year, FY 2020. However, the FY 2020 submission cohort has not been closed out yet, thus the cost data for FY 2020 are not complete. The latest year for which FDA has complete cost data is FY 2019. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. The Agency expects all applications that received priority review would contain clinical data. The application categories with clinical data for which FDA tracks the cost of review are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The total cost for FDA to review NME NDAs with clinical data and BLAs in FY 2019 was $199,369,923. There was a total of 70 applications in these two categories (49 NME NDAs with clinical data and 21 BLAs). (*Note:* These numbers exclude the President's Emergency Plan for AIDS Relief NDAs; no investigational new drug review costs are included in this amount.) Forty-four of these applications (32 NDAs and 12 BLAs) received priority review and the remaining 26 (17 NDAs and 9 BLAs) received standard reviews. Because a priority review compresses a review schedule that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months ÷ 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject, which supports a priority review multiplier in the range of 1.48 to 2.35 (Ref. 1). Using FY 2019 figures, the costs of a priority and standard review are estimated using the following formula:

$$(44\ \alpha \times 1.67) + (26\ \alpha) = \$199{,}369{,}923$$

where ''α'' is the cost of a standard review and ''α times 1.67'' is the cost of a priority review. Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be $2,004,121 (rounded to the nearest dollar) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or $3,346,882 (rounded to the nearest dollar). The difference between these two cost estimates, or $1,342,761, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2021 fee, FDA will need to adjust the FY 2019 incremental cost by the average amount by which FDA's average costs increased in the 3 years prior to FY 2020, to adjust the FY 2019 amount for cost increases in FY 2020. That adjustment, published in the **Federal Register** on August 3, 2020 (see 85 FR 46651), setting the FY 2021 PDUFA fees, is 1.3493 percent for the most recent year, not compounded. Increasing the FY 2019 incremental priority review cost of $1,342,761 by 1.3493 percent (or 0.013493) results in an estimated cost of $1,360,879 (rounded to the nearest dollar). This is the rare pediatric disease priority review user fee amount for FY 2021 that must be submitted with a priority review voucher for a human drug application in FY 2021, in addition to any PDUFA fee that is required for such an application.

III. Fee Rate Schedule for FY 2021

The fee rate for FY 2021 is set in table 1:

TABLE 1—RARE PEDIATRIC DISEASE PRIORITY REVIEW SCHEDULE FOR FY 2021

Fee category	Priority review fee rate for FY 2021
Application submitted with a rare pediatric disease priority review voucher in addition to the normal PDUFA fee	$1,360,879

IV. Implementation of Rare Pediatric Disease Priority Review User Fee

Under section 529(c)(4)(A) of the FD&C Act, the priority review user fee is due (*i.e.,* the obligation to pay the fee is incurred) when a sponsor notifies FDA of its intent to use the voucher. Section 529(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA payment procedures. In addition, section 529(c)(4)(C) specifies that FDA may not grant a waiver, exemption, reduction, or refund of any fees due and payable under this section of the FD&C Act.

The rare pediatric disease priority review fee established in the new fee schedule must be paid for applications submitted with a priority review voucher received on or after October 1, 2020. In order to comply with this requirement, the sponsor must notify FDA 90 days prior to submission of the human drug application that is the subject of a priority review voucher of

an intent to submit the human drug application, including the estimated submission date.

Upon receipt of this notification, FDA will issue an invoice to the sponsor for the rare pediatric disease priority review voucher fee. The invoice will include instructions on how to pay the fee via wire transfer, check, or online payments.

As noted in section II, if a sponsor uses a rare pediatric disease priority review voucher for a human drug application, the sponsor would incur the rare pediatric disease priority review voucher fee in addition to any PDUFA fee that is required for the application. The sponsor would need to follow FDA's normal procedures for timely payment of the PDUFA fee for the human drug application.

Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, credit card, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (*Note:* Only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S bank accounts as well as U.S. credit cards.

If paying by paper check the invoice number should be included on the check, followed by the words ''Rare Pediatric Disease Priority Review.'' All paper checks must be in U.S. currency from a U.S. bank made payable and mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery). The FDA post office box number (P.O. Box 979107) must be written on the check. If needed, FDA's tax identification number is 53–0196965.

If paying by wire transfer, please reference your invoice number when completing your transfer. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee it is required to add that amount to the payment to ensure that the invoice is paid in full. The account information is as follows: U.S. Dept. of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Number: 75060099, Routing Number: 021030004, SWIFT: FRNYUS33.

V. Reference

The following reference is on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is not available electronically at *https://www.regulations.gov* as this reference is copyright protected. 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. Ridley, D.B., H.G. Grabowski, and J.L. Moe, ''Developing Drugs for Developing Countries,'' *Health Affairs,* vol. 25, no. 2, pp. 313–324, 2006, available at: *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.25.2.313.*

Dated: October 2, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22186 Filed 10–2–20; 4:15 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1987]

Fee Rate for Using a Material Threat Medical Countermeasure Priority Review Voucher in Fiscal Year 2021

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the fee rate for using a material threat medical countermeasure (MCM) priority review voucher for fiscal year (FY) 2021. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the 21st Century Cures Act (Cures Act), authorizes FDA to determine and collect material threat MCM priority review user fees for certain applications for review of human drug products when those applications use a material threat MCM priority review voucher. These vouchers are awarded to the sponsors of material threat MCM applications that meet all the requirements of this program and upon FDA approval of such applications. The amount of the fee for using a material threat MCM priority review voucher is determined each FY based on the difference between the average cost incurred by FDA to review a human drug application designated as priority review in the previous FY, and the average cost incurred in the review of an application that is not subject to priority review in the previous FY. This notice establishes the material threat MCM priority review fee rate for FY 2021 and outlines the payment procedures for such fees.

FOR FURTHER INFORMATION CONTACT: Lola Olajide, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61077B, Beltsville, MD 20705–4304, 240–402–4244.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3086 of the Cures Act (Pub. L. 114–255) added section 565A to the FD&C Act (21 U.S.C. 360bbb–4a). In section 565A of the FD&C Act, Congress encouraged development of material threat MCMs by offering additional incentives for obtaining FDA approval of such products. Under section 565A of the FD&C Act, the sponsor of an eligible material threat MCM application (as defined in section 565A(a)(4)) shall receive a priority review voucher upon approval of the material threat MCM application. The recipient of a material threat MCM priority review voucher may either use the voucher for a future human drug application submitted to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or transfer (including by sale) the voucher to another party. The voucher may be transferred repeatedly until it ultimately is used for a human drug application submitted to FDA under section 505(b)(1) of the FD&C Act or section 351(a) of the Public Health Service Act. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending on the type of application. Information regarding PDUFA goals is available at

https://www.fda.gov/media/99140/download.

The sponsor that uses a material threat MCM priority review voucher is entitled to a priority review of its eligible human drug application, but must pay FDA a material threat MCM priority review user fee in addition to any user fee required by PDUFA for the application. Information regarding the material threat MCM priority review voucher program is available at: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/21st-century-cures-act-mcm-related-cures-provisions.*

This notice establishes the material threat MCM priority review fee rate for FY 2021 at $1,360,879 and outlines FDA's payment procedures for material threat MCM priority review user fees. This rate is effective on October 1, 2020, and will remain in effect through September 30, 2021.

II. Material Threat Medical Countermeasure Priority Review User Fee Rate for FY 2021

FDA interprets section 565A(c)(2) of the FD&C Act as requiring that FDA determine the amount of the material threat MCM priority review user fee each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred by FDA in the review of a human drug application that is not subject to priority review in the previous fiscal year.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted priority review status within this expedited timeframe. Normally, an application for a human drug product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. An application that does not receive a priority designation receives a standard review. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date, depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

FDA is setting a fee for FY 2021, which is to be based on standard cost data from the previous fiscal year, FY 2020. However, the FY 2020 submission cohort has not been closed out yet, thus the cost data for FY 2020 are not complete. The latest year for which FDA has complete cost data is FY 2019. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. The Agency expects all applications that received priority review would contain clinical data. The application categories with clinical data that for which FDA tracks the cost of review are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The total cost for FDA to review NME NDAs with clinical data and BLAs in FY 2019 was $199,369,923. There was a total of 70 applications in these two categories (49 NME NDAs with clinical data and 21 BLAs). (Note: These numbers exclude the President's Emergency Plan for AIDS Relief NDAs; no investigational new drug review costs are included in this amount.) Of these applications 44 (32 NDAs and 12 BLAs) received priority review and the remaining 26 (17 NDAs and 9 BLAs) received standard reviews. Because a priority review compresses a review schedule that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months ÷ 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject, which supports a priority review multiplier in the range of 1.48 to 2.35 (Ref. 1). Using FY 2019 figures, the costs of a priority and standard review are estimated using the following formula:

$$(44\ \alpha \times 1.67) + (26\ \alpha) = \$199{,}369{,}923$$

where ''α'' is the cost of a standard review and ''α times 1.67'' is the cost of a priority review. Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be $2,004,121 (rounded to the nearest dollar) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or $3,346,882 (rounded to the nearest dollar). The difference between these two cost estimates, or $1,342,761, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2021 fee, FDA will need to adjust the FY 2019 incremental cost by the average amount by which FDA's average costs increased in the 3 years prior to FY 2020, to adjust the FY 2019 amount for cost increases in FY 2020. That adjustment, published in the **Federal Register** on August 3, 2020 (see 85 FR 46651), setting FY 2021 PDUFA fees, is 1.3493 percent for the most recent year, not compounded. Increasing the FY 2019 incremental priority review cost of $1,342,761 by 1.3493 percent (or 0.013493) results in an estimated cost of $1,360,879 (rounded to the nearest dollar). This is the material threat MCM priority review user fee amount for FY 2021 that must be submitted with a priority review voucher for a human drug application in FY 2021, in addition to any PDUFA fee that is required for such an application.

III. Fee Rate Schedule for FY 2021

The fee rate for FY 2021 is set out in table 1:

TABLE 1—MATERIAL THREAT MEDICAL COUNTERMEASURE PRIORITY REVIEW SCHEDULE FOR FY 2021

Fee category	Priority review fee rate for FY 2021
Application submitted with a material threat MCM priority review voucher in addition to the normal PDUFA fee	$1,360,879

IV. Implementation of Material Threat Medical Countermeasure Priority Review User Fee

Under section 565A(c)(4)(A) of the FD&C Act, the priority review user fee is due upon submission of a human drug application for which the priority review voucher is used. Section 565A(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA payment procedures. In addition, section 565A(c)(4)(C) specifies that FDA may not grant a waiver, exemption, reduction, or refund of any fees due and

payable under this section of the FD&C Act.

The material threat MCM priority review fee established in the new fee schedule must be paid for any application with a priority review voucher that is received on or after October 1, 2020. This fee must be paid in addition to any other fee due under PDUFA. Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, credit card, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (*Note:* Only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov,* a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after the user fee ID number is generated.

If paying by paper check, the user fee identification (ID) number should be included on the check, followed by the words ''Material Threat Medical Countermeasure Priority Review.'' All paper checks must be in U.S. currency from a U.S. bank made payable and mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery). The FDA post office box number (P.O. Box 979107) must be written on the check. If needed, FDA's tax identification number is 53–0196965.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. The account information is as follows: U.S. Dept. of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Number: 75060099, Routing Number: 021030004, SWIFT: FRNYUS33.

V. Reference

The following reference is on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is not available electronically at *https://www.regulations.gov* as this reference is copyright protected. 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. Ridley, D.B., H.G. Grabowski, and J.L. Moe, ''Developing Drugs for Developing Countries,'' *Health Affairs,* vol. 25, no. 2, pp. 313–324, 2006, available at: *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.25.2.313.*

Dated: October 2, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22192 Filed 10–2–20; 4:15 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2014]

Joint Meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice, establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee. The general function of the committees is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on November 2, 2020, from 9 a.m. to 1 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2020–N–2014. The docket will close on October 30, 2020. Submit either electronic or written comments on this public meeting by October 30, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 30, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 30, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before October 19, 2020, will be provided to the committees. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–2014 for ''Joint Meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see the **ADDRESSSES** section), 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.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *AADPAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committees will discuss new drug application (NDA) 209257, proposed tradename, HYDEXOR, a fixed-dose combination oral tablet, submitted by Ōlas Pharma, Inc., that contains hydrocodone, acetaminophen, and promethazine, for the short-term (not to exceed 3 days) management of acute post-operative pain severe enough to require an opioid analgesic and the prevention of opioid-induced nausea and vomiting in patients who are at risk for or have a history of nausea and vomiting.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section) on or before October 19, 2020, will be provided to the committees. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 19, 2020. Time allotted for each presentation may be limited.

If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 20, 2020.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Moon Hee V. Choi (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 2, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22187 Filed 10–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1990]

Fee Rate for Using a Tropical Disease Priority Review Voucher in Fiscal Year 2021

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the fee rates for using a tropical disease priority review voucher for fiscal year (FY) 2021. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Amendments Act of 2007 (FDAAA), authorizes FDA to determine and collect priority review user fees for certain applications for review of drug and biological products when those applications use a tropical disease priority review voucher. These vouchers are awarded to the sponsors of certain tropical disease product applications submitted after September 27, 2007, the enactment date of FDAAA, upon FDA approval of such applications. The amount of the fee submitted to FDA with applications using a tropical disease priority review voucher is determined each fiscal year based on the difference between the average cost incurred by FDA to review a human drug application designated as priority review in the previous fiscal year and the average cost incurred in the review of an application that is not subject to priority review in the previous fiscal year. This notice establishes the tropical disease priority review fee rate for FY 2021 and outlines the payment procedures for such fees.

FOR FURTHER INFORMATION CONTACT: Andrew Bank, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 62019A, Beltsville, MD, 20705–4304, 301–796–0292.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1102 of FDAAA (Pub. L. 110–85) added section 524 to the FD&C Act (21 U.S.C. 360n). In section 524, Congress encouraged development of new drug and biological products for prevention and treatment of tropical diseases by offering additional incentives for obtaining FDA approval of such products. Under section 524, the sponsor of an eligible human drug application submitted after September 27, 2007, for a tropical disease (as defined in section 524(a)(3) of the FD&C Act) shall receive a priority review voucher upon approval of the tropical disease product application (as defined in section 524(a)(4) of the FD&C Act), assuming other criteria are met. The recipient of a tropical disease priority review voucher may either use the voucher for a future human drug application submitted to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (PHS Act) (42 U.S.C. 262), or transfer (including by sale) the voucher to another party. The voucher may be transferred repeatedly until it ultimately is used for a human drug application submitted to FDA under section 505(b)(1) of the FD&C Act or section 351(a) of the PHS Act. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending upon the type of application. Information regarding the PDUFA goals is available at: *https://www.fda.gov/media/99140/download.*

The sponsor that uses a priority review voucher is entitled to a priority review but must pay FDA a priority review user fee in addition to any other fee required by PDUFA. FDA published guidance on its website about how this tropical disease priority review voucher program operates (available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/tropical-disease-priority-review-vouchers*).

This notice establishes the tropical disease priority review fee rate for FY 2021 as $1,360,879 and outlines FDA's process for implementing the collection of the priority review user fees. This rate is effective on October 1, 2020, and will remain in effect through September 30, 2021, for applications submitted with a tropical disease priority review voucher.

II. Tropical Disease Priority Review User Fee Rate for FY 2021

FDA interprets section 524(c)(2) of the FD&C Act as requiring that FDA determine the amount of the tropical disease priority review user fee each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year and the average cost incurred by FDA in the review of a human drug application that is not subject to priority review in the previous fiscal year.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted priority review status within this expedited timeframe. Normally, an application for a human drug or biological product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. An application that does not receive a priority designation receives a standard review. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date, depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

FDA is setting fees for FY 2021, which is to be based on standard cost data from the previous fiscal year, FY 2020. However, the FY 2020 submission cohort has not been closed out yet, thus the cost data for FY 2020 are not complete. The latest year for which FDA has complete cost data is FY 2019. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. The Agency expects all applications that received priority review would contain clinical data. The application categories with clinical data for which FDA tracks the cost of review are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The total cost for FDA to review NME NDAs with clinical data and BLAs in FY 2019 was $199,369,923. There was a

total of 70 applications in these two categories (49 NME NDAs with clinical data and 21 BLAs). (Note: these numbers exclude the President's Emergency Plan for AIDS Relief NDAs; no investigational new drug review costs are included in this amount.) Of these applications, 44 (32 NDAs and 12 BLAs) received priority review and the remaining 26 (17 NDAs and 9 BLAs) received standard reviews. Because a priority review compresses a review that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months divided by 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject, which supports a priority review multiplier in the range of 1.48 to 2.35 (Ref. 1). Using FY 2019 figures, the costs of a priority and standard review are estimated using the following formula:

$$(44\ \alpha \times 1.67) + (26\ \alpha) = \$199{,}369{,}923$$

where ''α'' is the cost of a standard review and ''α times 1.67'' is the cost of a priority review. Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be $2,004,121 (rounded to the nearest dollar) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or $3,346,882 (rounded to the nearest dollar). The difference between these two cost estimates, or $1,342,761, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2021 fee, FDA will need to adjust the FY 2019 incremental cost by the average amount by which FDA's average costs increased in the 3 years prior to FY 2020, to adjust the FY 2019 amount for cost increases in FY 2020. That adjustment, published in the **Federal Register** on August 3, 2020 (see 85 FR 46651), setting FY 2021 PDUFA fees, is 1.3493 percent for the most recent year, not compounded. Increasing the FY 2019 incremental priority review cost of $1,342,761 by 1.3493 percent (or 0.013493) results in an estimated cost of $1,360,879 (rounded to the nearest dollar). This is the tropical disease priority review user fee amount for FY 2021 that must be submitted with a priority review voucher for a human drug application in FY 2021, in addition to any PDUFA fee that is required for such an application.

III. Fee Rate Schedule for FY 2021

The fee rate for FY 2021 is set out in table 1:

TABLE 1—TROPICAL DISEASE PRIORITY REVIEW SCHEDULE FOR FY 2021

Fee category	Priority review fee rate for FY 2021
Application submitted with a tropical disease priority review voucher in addition to the normal PDUFA fee	$1,360,879

IV. Implementation of Tropical Disease Priority Review User Fee

Under section 524(c)(4)(A) of the FD&C Act, the priority review user fee is due upon submission of a human drug application for which the priority review voucher is used. Section 524(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA payment procedures. In addition, FDA may not grant a waiver, exemption, reduction, or refund of any fees due and payable under section 524 of the FD&C Act (see section 524(c)(4)(C)), and FDA may not collect priority review voucher fees ''except to the extent provided in advance in appropriation Acts.'' (Section 524(c)(5)(B) of the FD&C Act.)

The tropical disease priority review fee established in the new fee schedule must be paid for any application that is received on or after October 1, 2020, and submitted with a priority review voucher. This fee must be paid in addition to any other fee due under PDUFA. Payment should be made in U.S. currency by electronic check, check, bank draft, wire transfer, credit card, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (*Note:* only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments should be made using U.S bank accounts as well as U.S. credit cards.

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov,* a web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA website after the user fee identification (ID) number is generated.

If paying by paper check, the user fee ID number should be included on the check, followed by the words ''Tropical Disease Priority Review.'' All paper checks should be in U.S. currency from a U.S. bank made payable and mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only.) If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. (This telephone number is only for questions about courier delivery.) The FDA post office box number (P.O. Box 979107) must be written on the check. If needed, FDA's tax identification number is 53–0196965.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. The account information is as follows: U.S. Dept. of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Number: 75060099, Routing Number: 021030004, SWIFT: FRNYUS33.

V. Reference

The following reference is on display with the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is not available electronically at *https://www.regulations.gov* as this reference is

copyright protected. 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. Ridley, D.B., H.G. Grabowski, and J.L. Moe, ''Developing Drugs for Developing Countries,'' *Health Affairs,* vol. 25, no. 2, pp. 313–324, 2006, available at: *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.25.2.313*.

Dated: October 2, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22191 Filed 10–2–20; 4:15 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Council on Nurse Education and Practice

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice; correction.

SUMMARY: The National Advisory Council on Nurse Education and Practice (NACNEP) meeting scheduled for Wednesday, December 2, 2020, from 8:30 a.m. to 5:00 p.m. and Thursday, December 3, 2020, from 8:30 a.m. to 2:00 p.m. Eastern Time has changed its format. The meeting will now be a webinar and conference call only. The webinar link, conference dial-in number, meeting materials, and updates will be available on the NACNEP website: *https://www.hrsa.gov/advisory-committees/nursing/meetings.html*.

FOR FURTHER INFORMATION CONTACT: Camillus Ezeike, Ph.D., JD, LLM, RN, PMP, Designated Federal Officer, NACNEP, Bureau of Health Workforce, Division of Nursing and Public Health, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301–443–2866; or *BHWNACNEP@hrsa.gov*.

Correction: [This meeting will be a two day webinar and conference call only, rather than a two day in-person meeting as previously announced.]

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–22208 Filed 10–6–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; NCCIH Training and Education Review Panel (CT).

Date: November 12–13, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NCCIH, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Marie McKlveen, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–547, *jessica.mcklveen@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: October 1, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22110 Filed 10–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2) and Coronavirus Disease 2019 (COVID–19).

Date: October 15, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F50, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ruth S. Grossman, DDS, Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12J, Bethesda, MD 20892, *grossmanrs@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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 1, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22109 Filed 10–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Adult Changes in Thought Research Program.

Date: October 29, 2020.

Time: 12:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Isis S. Mikhail, MD, MPH, DrPH, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7704, *mikhaili@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 2, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22189 Filed 10–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL01000–L161000000.PN0000; MO #4500146072; MTM–89170–01]

Notice of Proposed Withdrawal and Notification of Public Meeting, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed withdrawal.

SUMMARY: The Department of the Interior proposes to withdraw 2,688.13 acres of public lands in Phillips County, Montana, from location or entry under the United States mining laws, but not from the mineral leasing or the mineral materials disposal laws for up to 20 years, subject to valid existing rights, to protect the Zortman-Landusky Mine reclamation site. The proposed 20-year withdrawal, if established, would replace the existing 5-year withdrawal created by Public Land Order (PLO) 7464, as extended three times, and which will expire October 4, 2020. Publication of this notice segregates the lands for up to 2 years from location or entry under the United States mining laws, subject to valid existing rights, while the application is being processed. This notice also announces to the public the opportunity to comment on the proposed withdrawal application and to participate in a virtual public meeting.

DATES: Comments must be received by January 5, 2021. The Bureau of Land Management (BLM) will hold a virtual public meeting in connection with the proposed withdrawal on December 7, 2020, at 6:30 p.m. The BLM will publish instructions on how to access the online public meeting in the *Lewistown News—Argus* (Lewistown), *Havre Daily News* (Havre), and *Phillips County News* (Malta) newspapers a minimum of 30 days prior to the meeting.

ADDRESSES: All comments should be sent to: Malta Field Office, Attn: Field Manager, 501 South 2nd St. East, Malta, Montana 59538; or sent by email to *mrlee@blm.gov.* The BLM will not consider comments received via telephone.

FOR FURTHER INFORMATION CONTACT: Micah Lee, Realty Specialist, BLM, at 406–262–2851; or by email at *mrlee@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for Ms. Lee. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM filed a petition and application to withdraw, subject to valid existing rights, 2,688.13 acres of land located in Phillips County, Montana, from location or entry under the United States mining laws (30 U.S.C. Ch. 2), but not from the mineral leasing or mineral materials disposal laws, for 20 years, to protect the Zortman-Landusky Mine area and facilitate reclamation and stabilization within the following legal description.

Principal Meridian, Montana

T. 25 N., R. 24 E.,
- Sec. 10, lots 7 thru 11 and NE¼SE¼;
- Sec. 11, lot 8;
- Sec. 12, lots 8, 20, 23, and 24 and SE¼SW¼;
- Sec. 13, W½NW¼;
- Sec. 14, lots 1 and 2, lots 4 thru 11, E½NE¼, SW¼NE¼, and N½SE¼;
- Sec. 15, lots 4 thru 18;
- Sec. 21, SE¼NE¼, NE¼SE¼, and W½SE¼SE¼;
- Sec. 22, lot 1, lots 3 thru 7, SE¼NE¼, W½NW¼, N½SW¼, NE¼SW¼SW¼, N½SE¼SW¼, and NW¼SE¼;
- Sec. 23, W½NE¼ and NW¼.

T. 25 N., R. 25 E.,
- Sec. 7, lots 5 thru 9, lots 14, 17, 18, 22, 23, 24, and 26, lots 28 thru 32, and NW¼NE¼;
- Sec. 8, SW¼SW¼;
- Sec. 17, lots 3 and 4, NW¼NE¼, S½NE¼, E½NW¼, N½NE¼NE¼SE¼, N½NW¼NE¼SE¼, N½NE¼NW¼SE¼, and N½NW¼NW¼SE¼;
- Sec. 18, lots 2 thru 5, lots 9, 10, 13, and 14, and SW¼NE¼.

The areas described aggregate 2,688.13 acres.

The Secretary of the Interior approved the BLM' s petition/application. Therefore, the petition/application constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal is to continue the protection of the lands provided by PLO 7464, as extended, and to facilitate reclamation in the Zortman-Landusky Mine reclamation area.

The use of a right-of-way, interagency agreement, or cooperative agreement would not adequately constrain non-discretionary uses and would not provide adequate protection of the Federal investment in the mine reclamation work located on the lands.

There are no suitable alternative sites available where the withdrawal would facilitate mine reclamation since the location of the mines and necessary reclamation materials are fixed.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

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.

Notice is hereby given that a virtual (online) public meeting in connection with the withdrawal application and segregation will be held on December 7, 2020, at 6:30 p.m. The BLM will publish a notice of the time and online venue in a local newspaper a minimum of 15 days before the scheduled date of the meeting. The BLM will prepare an environmental assessment to evaluate the proposed withdrawal and any alternatives in order to make a recommendation to the Secretary of the Interior (or appropriate Departmental official).

For a period until October 7, 2022, the public lands described in this notice will be segregated from location or entry under the United States mining laws, but not from the mineral leasing or mineral materials disposal laws, subject to valid existing rights, unless the application is denied or canceled or the withdrawal is approved prior to that date.

Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of the authorized officer of the BLM during the temporary segregation period.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Dated: October 1, 2020.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2020–22313 Filed 10–5–20; 4:15 pm]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1168]

Certain Light-Emitting Diode Products, Systems, and Components Thereof (III); Commission Determination To Review In Part a Final Initial Determination Finding No Violation of Section 337 and, on Review, To Affirm the Final Initial Determination's Finding of No Violation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on June 26, 2020, the presiding administrative law judge (''ALJ'') issued a combined final initial determination (''ID'') and recommended determination (''RD'') on remedy and bonding. The final ID finds no violation of section 337 in the above-captioned investigation. The Commission has determined to review the final ID in part and, on review, has determined to affirm the final ID's finding of no violation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. 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, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On June 25, 2019, the Commission instituted Investigation No. 337–TA–1163 (''the 1163 investigation''), based on a complaint, as amended, filed by Lighting Science Group Corporation and Health Inc., both of Cocoa Beach, Florida, and Global Value Lighting, LLC of West Warwick, Rhode Island (collectively, ''LSG''). 84 FR 29877 (June 25, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (''section 337''), based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diode products, systems, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,098,483 (''the '483 patent''), 7,095,053 (''the '053 patent''), 7,528,421 (''the '421 patent''), 8,506,118, and 8,674,608. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names the following entities as respondents: Nichia Corporation of Tokushima, Japan and Nichia America Corporation of Wixom, Michigan (together, ''Nichia''); Cree, Inc. of Durham, North Carolina; Cree Hong Kong, Limited of Shatin, Hong Kong; Cree Huizhou Solid State Lighting Co., Ltd. of Guangdong, China; OSRAM GmbH and OSRAM Licht AG, both of Munich, Germany; OSRAM Opto Semiconductors GmbH of Regensburg, Germany; OSRAM Opto Semiconductors, Inc. of Sunnyvale, California; Lumileds Holding B.V. of Schipol, Netherlands and Lumileds, LLC of San Jose, California (together, ''Lumileds''); Signify N.V. (f/k/a Philips Lighting N.V.) of Eindhoven, Netherlands; Signify North America Corporation (f/k/a Philips Lighting North America Corporation) of Somerset, New Jersey; MLS Co., Ltd. of Zhongshan City, China; LEDVANCE GmbH of Garching, Germany; LEDVANCE LLC of Wilmington, Massachusetts; General Electric Company of Boston, Massachusetts; Consumer Lighting (U.S.), LLC (d/b/a GE Lighting, LLC) of Cleveland, Ohio; Current Lighting Solutions, LLC of Cleveland, Ohio; Acuity Brands, Inc. of Atlanta, Georgia; Acuity Brands Lighting, Inc. of Conyers, Georgia; Leedarson Lighting Co., Ltd. of Xiamen, China; and Leedarson America, Inc. of Smyrna, Georgia (collectively, the ''Respondents''). *Id.* at 29878. The Office of Unfair Import Investigations is not a party to this investigation. *Id.*

On July 10, 2019, the ALJ severed from the 1163 investigation the present investigation, Investigation No. 337–TA–1168, which concerns whether there is a violation of section 337 based on allegations of infringement of the '483, '053, and '421 patents. Order No. 5 at 2 (July 10, 2019).

On January 20, 2020, the Commission terminated this investigation as to claim 7 of the '421 patent. Order No. 18 (Dec. 30, 2019), *unreviewed by* Comm'n Notice (Jan. 29, 2020). On February 7, 2020, the Commission terminated this investigation as to respondents MLS Co., Ltd. and Ledvance GmbH. Order No. 24 (Jan. 14, 2020), *unreviewed by* Comm'n Notice (Feb. 7, 2020). On February 26, 2020, the Commission terminated this investigation as to: (1) Claims 2 and 10 of the '421 patent; (2) claims 4, 16–20, 22, and 26–30 of the '053 patent; and (3) as to Lumileds only, claims 1–5 and 12 of the '053 patent. Order No. 26 (Jan. 29, 2020), *unreviewed by* Comm'n Notice (Feb. 26, 2020).

On February 14, 2020, the ALJ issued an initial determination granting in part Respondents' motion for summary determination on non-infringement and failure to meet the technical prong of the domestic industry requirement. Order No. 32 (Initial Determination) (Feb. 14, 2020). The Commission declined to review that determination and subsequently terminated the investigation as to: (1) All asserted claims of the '483 patent; and (2) asserted claims 7 and 11–15 of the '053 patent. *See* Comm'n Notice (Apr. 7, 2020). That determination is currently on appeal. Appeal No. 20–1907 (Fed. Cir.).

On June 26, 2020, the ALJ issued a combined final ID and RD on remedy and bonding. The final ID finds no violation of Section 337. *See* Final ID.

On July 15, 2020, LSG filed a petition for review of certain findings in the final ID, and Respondents filed a contingent-in-part petition for review. On July 28, 2020, the parties filed responses to each other's petitions.

On July 27, 2020, the Commission received submissions on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)) from the following Respondents: (1) Acuity Brands, Inc. and Acuity Brands Lighting, Inc.; and (2) General Electric Co. and Consumer Lighting (U.S.), LLC (d/b/a GE Lighting, LLC). On July 28, 2020, the Commission received a submission on the public interest from LSG. No submissions were filed in response to the Commission's **Federal Register** notice. *See* 85 FR 40318–19 (July 6, 2020).

Having reviewed the record in this investigation, including the ALJ's orders and final ID, as well as the parties' petitions and responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the following issues: (1) Whether the accused Nichia products and the alleged domestic industry product satisfy the limitation ''and thermally coupled through the metal base to the thermal connection pad'' of claim 1 of the '053 patent; (2) whether the accused products and the alleged domestic industry products satisfy the additional limitation ''wherein the thermally conducting base includes a metal base'' of claim 6 of the '421 patent; (3) whether the asserted claims of the '421 patent are invalid as obvious; and (4) whether LSG satisfied the economic prong of the domestic industry requirement. On review, the Commission has determined to take no position on these issues.

Further on review, the Commission has determined to correct two typographical errors in the final ID: In the fourth line of page 34, ''does recite'' is replaced with ''does not recite''; and in the fifth line of page 40, ''a thermal via'' is replaced with ''thermal coupling.''

The Commission has determined not to review the remaining findings in the final ID, in particular that the asserted claims of the '053 and '421 patents have not been infringed, that the technical prong of the domestic industry requirement has not been satisfied with respect to either the '053 or '421 patent, and that the asserted claims of the '421 patent have been shown invalid as anticipated and for lacking written description support.

Accordingly, the Commission has determined to affirm the final ID's finding of no violation of section 337. The investigation is terminated.

The Commission vote for these determinations took place on October 1, 2020.

The authority for the Commission's determinations 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).

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(s) complete service for any party/parties 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).

By order of the Commission.

Issued: October 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–22114 Filed 10–6–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Automated Storage and Retrieval Systems, Robots, and Components Thereof, DN 3498;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of AutoStore Technology AS, AutoStore AS, and AutoStore System Inc. on October 1, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated storage and retrieval systems, robots, and components thereof. The complaint names as respondents: Ocado Group Plc of the United Kingdom; Ocado Central Services Ltd. of the United Kingdom; Ocado Innovation Ltd. of the United Kingdom; Ocado Operating Ltd. of the United Kingdom; Ocado Solutions. Ltd. of the United Kingdom; Ocado Solutions USA Inc. of Tysons Corner, VA; Tharsus Group Ltd. of the United Kingdom; and Printed Motor Works Ltd. of the United Kingdom. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3498'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–22104 Filed 10–6–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Barbara D. Marino, M.D.; Decision and Order

On June 12, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Barbara D. Marino, M.D. (hereinafter, Registrant), of Houston, Texas. Government's Request for Final Agency Action Exhibit (hereinafter, RFAAX) 4 (OSC), at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BD0903244. It alleged that Registrant is without ''authority to handle controlled substances in Texas, the state in which [Registrant] is registered with DEA.'' *Id.* at 1–2 (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).

Specifically, the OSC alleged that Registrant's state license to practice medicine in Texas has been temporarily suspended. *Id.* The OSC further alleged that, because Registrant's Texas medical license is suspended, Registrant lacks the authority to handle controlled substances in Texas, and is, therefore, ineligible to maintain a DEA registration. *Id.*

The OSC notified Registrant of the right to either request a hearing on the allegations or submit a written statement in lieu of exercising the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

I. Adequacy of Service

A DEA Task Force Officer (hereinafter, TFO) declared that he personally served Registrant with the OSC on July 9, 2020. RFAAX 9, at 3 (Declaration of TFO). During the service of the OSC, Registrant signed a Form DEA–12 documenting Registrant's acknowledgement that she had received the OSC. RFAAX 5; RFAAX 9, at 3.

The Government forwarded its Request for Final Agency Action (hereinafter, RFAA), along with the evidentiary record, to this office on August 27, 2020. In its RFAA, the Government represents that ''neither the [Houston Field Division] nor the DEA Office of Administrative Law Judges had received any written correspondence, telephonic communication, or any other communication from Registrant, or any representative on her behalf in response to the [OSC].'' RFAA, at 4 (citing RFAAX 6 (Email from Office of Administrative Law Judges), 7 (Email from Houston Division Office), 9, and 10 (Declaration of DEA Diversion Investigator)).

Based on the TFO's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on July 9, 2020. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

II. Findings of Fact

A. Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BD0903244 at the registered address of 8188 Long Point Road, Houston, Texas 77055. RFAAX 1 (Certificate of

Registration) and 2 (Certification of Registration History, dated August 10, 2020). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II–V as a practitioner DW/275. RFAAX 2.

B. The Status of Registrant's State License

On February 7, 2020, the Texas Medical Board (hereinafter, Board) issued an Order of Temporary Suspension (hereinafter, Order). RFAAX 3. According to the Order, Registrant failed to meet the standard of care and documentation standards for six patients. *Id.* at 3. Specifically, the Order stated that Registrant ''failed to obtain or perform an adequate history or assessment of the patients by neglecting to obtain prior treating provider's records, a history of prior treatments, and the patient's response to treatment,'' or ''conducting and documenting an adequate examination of the patient's source of pain''; ''failed to have or document adequate medical rationale or evidence of therapeutic benefit of the Norco and Soma that [Registrant] prescribed to each of the six patients''; and ''failed to monitor the patients for therapeutic benefit, diversion, or abuse of the medications she prescribed, including controlled substances.'' *Id.* The Order also stated that Registrant had ten medical malpractice claims/lawsuits between 2005 and 2013, entered into an Agreed Order with the Board in 2006, and entered into a Mediated Agreed Order in 2012, resolving four investigations into Registrant's cosmetic surgery practice. *Id.* at 1–2. The Order further stated that the Board entered an Order of Temporary Suspension Without Notice suspending Registrant's license after finding out that Registrant was ''arrested and indicted for conspiracy to unlawfully distribute and dispense controlled substances and aiding and abetting the same . . . in the United States District Court for the Southern District of Texas.'' *Id.* at 2.

In the Order, the Board found that Registrant's conduct ''shows that [Registrant's] continued practice of medicine would constitute a continuing threat to the public welfare, as defined by Section 151.002(a)(2) of the [Medical Practice] Act.'' *Id.* at 7. The Board, therefore, ordered that Registrant's Texas medical license be temporarily suspended effective February 7, 2020, and stated that the ''Order shall remain in effect until it is superseded by an Order of the Board.'' *Id.* at 9.

According to Texas's online records, of which I take official notice, Registrant's medical license is still suspended.[1] Texas Medical Board, Look Up a License, available at *http://reg.tmb.state.tx.us/page/look-up-a-license* (last visited September 24, 2020).

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in Texas, the state in which Registrant is registered with DEA.

III. Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR at 27,617.

Under the Texas Controlled Substances Act, a practitioner in Texas ''may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's direction and supervision except for a valid medical purpose and in the course of medical practice.'' Tex. Health and Safety Code Ann. § 481.071 (West 2019). The Texas Controlled Substances Act defines ''practitioner,'' in relevant part, as ''a physician . . . licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.'' *Id.* at § 481.002 (39)(A). Further, under the Texas Medical Practice Act, a person must hold a license to practice medicine in Texas, Tex. Occupations Code Ann. § 155.001 (West 2019) (''A person may not practice medicine in this state unless the person holds a license issued under [the Medical Practice Act].''); *see also id.* at § 151.002 (''' 'Physician' means a person licensed to practice medicine in this state.''), and ''[a] person commits an offense if the person practices medicine in [Texas] in violation of'' the Act, *id.* at § 165.152(a).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Texas. I, therefore, find that Registrant is currently without authority to dispense controlled substance in Texas, the state in which she is registered with DEA, and I will order that Registrant's DEA registration be revoked.

IV. Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BD0903244 issued to Barbara D. Marino, M.D. Further, pursuant to 28 CFR 0.100(b) and the

[1] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by email (*dea.addo.attorneys@dea.usdoj.gov*).

authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Barbara D. Marino, M.D. to renew or modify this registration, as well as any pending application of Barbara D. Marino, M.D. for registration in Texas. This Order is effective November 6, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–22214 Filed 10–6–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jacqueline G. Curtis, M.D.; Decision and Order

On December 18, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Jacqueline G. Curtis, M.D. (hereinafter, Registrant) of Jackson, Mississippi. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. FC8151475. It alleged that Registrant is without ''authority to handle controlled substances in the State of Mississippi, the state in which [Registrant is] registered with the DEA.'' *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that the Mississippi State Board of Medical Licensure (hereinafter, MSBML) issued an Order of Temporary Suspension on November 6, 2019. *Id.* at 2. This Order, according to the OSC, suspended Registrant's license to practice medicine. *Id.* at 2. The OSC further stated that Registrant's license to practice medicine had expired on November 8, 2019, and remained expired; therefore, the OSC concluded that Registrant ''currently lack[s] authority to handle controlled substances in Mississippi.'' *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated April 24, 2020, a Diversion Investigator (hereinafter, DI 1) stated that her investigation revealed that although Registrant was registered with DEA to handle controlled substances in Mississippi, Registrant was separately licensed to practice medicine in the State of Texas and also resides in that state. Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter, RFAAX) 11 (Declaration of DI 1), at 2–3. As a result, and shortly after the December 18th issuance of the OSC, DI 1 contacted another Diversion Investigator (hereinafter, DI 2) of the agency's Dallas Field Division to request that office's assistance with service of the OSC on Registrant. *Id.*

In a Declaration dated April 24, 2020, DI 2 stated that he and DEA Special Agent travelled to 4834 Worth Street, Dallas, Texas 75246 to meet with Registrant and serve her with the OSC on December 30, 2019. RFAAX 12 (Declaration of DI 2), at 2. Once at the above location, DEA personnel displayed their credentials and introduced themselves. *Id.* Based on a previous interaction, DI 2 stated that he recognized the individual who answered the door as the Registrant. *Id.* Registrant signed a DEA Form 12, Receipt for Cash or Other Items, to acknowledge her receipt of the Show Cause Order. *Id.; see also* RFAAX 6 (DEA Form 12).

The Government forwarded its RFAA, along with the evidentiary record, to this office on May 14, 2020. In its RFAA, the Government represents that it ''has not received any written correspondence, telephonic communication, or any other communication from Registrant, or any representative on her behalf in response to the [OSC].'' RFAA, at 4 (citing RFAAX 7, 8, and 9). The Government requests that Registrant's Certificate of Registration be revoked pursuant to 21 U.S.C. 823(f) and 824(a)(3). *Id.*

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on December 30, 2019. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

Findings of Fact

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. FC8151475 at the registered address of the Clarity Clinic, 2500 N State Street, Jackson, Mississippi 39216. RFAAX 2 (Certification of Registration History). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II, IIN, III, IIIN, IV and V as a practitioner. *Id.*

The Status of Registrant's State License

On November 6, 2019, the MSBML issued a Determination of Need for Temporary Suspension (hereinafter, Suspension). RFAAX 3, at 3–4. According to the Suspension, Registrant's ''continued practice o[f] unrestricted of medicine . . . would constitute an immediate danger to the public,'' and the Suspension suspended Registrant's license to practice medicine effective immediately. *Id.*

After receiving the Suspension, Registrant agreed in writing to ''voluntarily surrender her medical license [ ] to practice medicine in the State of Mississippi . . . effective immediately upon execution.'' [1] RFAAX 4 (Surrender of Medical License (hereinafter, Surrender)), at 1.

According to Mississippi's online records, of which I take official notice, Registrant's license remains ''inactive'' and provides links to the Suspension and Surrender.[2] Mississippi State Board of Medical Licensure, *https://*

[1] The Surrender was signed by Registrant and dated December ____ 2019. DI 1 stated in her declaration that she ''learned that it was accepted by the MSBML with an effective date of January 16, 2020.'' RFAAX 11, at 2. Based on the assertions of the DI and the evidence on the MSBML website, I find that the facts support that the Surrender was executed and is currently in effect.

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by email to *dea.addo.attorneys@dea.usdoj.gov.*

gateway.msbml.ms.gov/verification.results.aspx (last visited September 24, 2020).

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in Mississippi the State in which Registrant is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR at 27,617.

According to Mississippi statute, ''no controlled substance in Schedule II . . . may be dispensed without the written prescription of a practitioner,'' and ''except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV . . . shall not be dispensed without a written or oral valid prescription of a practitioner.'' Miss. Code Ann. § 41–29–137(a)(1) and (a)(2) (West 2020). Further, ''a practitioner'' is defined as ''a physician, dentist, veterinarian, scientific investigator, optometrist . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.'' Miss. Code Ann. § 41–29–105(y)(1) (West 2020). Mississippi regulations define a ''physician'' to be ''any person licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.'' 30–2640 Miss. Code R. § 1.2(C). The regulations further state that '' 'prescriptive authority' means the legal authority of a professional licensed to practice in the state of Mississippi who prescribes controlled substances and is registered with the U.S. Drug Enforcement Administration in compliance with Title 21 CFR, Part 1301 Food and Drugs.'' 30–2640 Miss. Code R. § 1.2(F).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Mississippi. As already discussed, a physician must be a licensed to practice medicine to have prescriptive authority for a controlled substance in Mississippi. Thus, because Registrant lacks authority to practice medicine in Mississippi and, therefore, is not authorized to prescribe controlled substances in Mississippi, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FC8151475 issued to Jacqueline G. Curtis, M.D. This Order is effective November 6, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–22213 Filed 10–6–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stacey Lynne Schirmer, M.D.; Decision and Order

On February 14, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Stacey Lynne Schirmer, M.D. (hereinafter, Applicant), of Angels Camp, California. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the denial of Applicant's application for a DEA Certificate of Registration. It alleged that Applicant is without ''authority to handle controlled substances in California, the state in which [Applicant] seek[s] registration with DEA.'' *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that the Medical Board of California (hereinafter, Board) issued a Cease Practice Order on January 7, 2020, which prohibits Applicant from ''engaging in the practice of medicine.'' *Id.* at 1–2. The OSC further alleged that, because Applicant's California medical license is suspended, Applicant lacks the authority to handle controlled substances in California, and is, therefore, ineligible to obtain a DEA registration. *Id.* at 2.

The OSC notified Registrant of the right to either request a hearing on the allegations or submit a written statement in lieu of exercising the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

A DEA Diversion Investigator personally served Applicant with the OSC on May 21, 2020. Government's Request for Final Agency Action Exhibit (hereinafter, RFAAX) 9, at 3 (Declaration of Diversion Investigator); RFAAX 5 at 1 (Service Receipt). I find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Applicant, nor anyone purporting to represent Applicant, requested a hearing, submitted a written statement while waiving Applicant's right to a hearing, or submitted a corrective action plan. *Id.;* RFAAX 6. Accordingly, I find that Applicant has waived the right to a hearing and the right to submit a written statement and

corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.46.

I. Findings of Fact

A. Applicant's Application for a DEA Registration

On October 18, 2019,[1] Applicant submitted an application for DEA registration as a practitioner seeking authorization to handle controlled substances in schedules IIN, IIIN, IV, and V. RFAAX 1–2. Applicant's proposed DEA registered address is P.O. Box 939, Angels Camp, California 95222. *Id.* Applicant is the former holder of DEA Certificate of Registration No. BH5379549, which she voluntarily surrendered on September 27, 2011. RFAAX 2, at 1.

B. The Status of Applicant's State License

Applicant has been the holder of California Physician's and Surgeon's Certificate No. A 62148 (hereinafter, medical license). RFAAX 3, at 1 (Cease Practice Order). On August 9, 2019, the Medical Board of California placed Applicant's license on a five-year probation subject to certain terms and conditions. *Id.*

On January 7, 2020, the Medical Board of California issued a Cease Practice Order with respect to Applicant's medical license. *Id.* According to the Cease Practice Order, Applicant failed to obey the probationary conditions that were placed on her medical license by the Board on August 9, 2019. *Id.* The Board, therefore, issued the Cease Practice Order prohibiting Applicant from ''engaging in the practice of medicine.'' *Id.* The Cease Practice Order further stated that Applicant ''shall not resume the practice of medicine until a final decision has been issued on an accusation and/or petition to revoke probation filed pursuant to this matter.'' *Id.* at 1–2.

The online records of the California Department of Consumer Affairs, of which I take official notice, state that Applicant's medical license is suspended.[2] *https://search.dca.ca.gov/results* (last visited September 24, 2020). The records further state that Applicant is prohibited from ''ordering, prescribing, dispensing, administering, furnishing, or possessing'' any controlled substances. *Id.;* RFAAX 8, at 1 (Medical Board of California, Online Licensing Details for Physician's and Surgeon's Certificate No. A 62148, dated June 24, 2020).

Accordingly, I find that Applicant is currently without authorization to dispense controlled substances in California, the state in which Applicant has applied for registration with DEA.

II. Discussion

With respect to a practitioner, DEA has long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978); *see also* 21 U.S.C. 824(a)(3) (authorizing revocation ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances''). This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f).

Here, the undisputed evidence in the record is that Applicant currently lacks authority to dispense controlled substances in California, the state in which she seeks registration. Because Applicant lacks authority to dispense controlled substances in California, she is not eligible for DEA registration in California. Accordingly, I will order that Applicant's application for a DEA registration be denied.

III. Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny the application of Stacey Lynne Schirmer for a DEA Certificate of Registration in California. This Order is effective November 6, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–22210 Filed 10–6–20; 8:45 am]

BILLING CODE 4410–09–P

[1] The OSC incorrectly cited October 21, 2019, as the submission date for Applicant's application for a DEA registration. I find this error to be a scrivener's error.

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Applicant may dispute my finding by filing a properly supported motion for reconsideration within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Applicant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by email (*dea.addo.attorneys@dea.usdoj.gov*).

DEPARTMENT OF JUSTICE

Notice of Task Force on Research on Violence Against American Indian and Alaska Native Women Meeting

AGENCY: Office on Violence Against Women, United States Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Office on Violence Against Women (OVW), U.S. Department of Justice has scheduled a meeting of the Task Force on Research on Violence Against American Indian and Alaska Native Women (hereinafter ''the Task Force'').

DATES: The meeting will take place on October 22, 2020 from 1:00 p.m. to 5:00 p.m. (Eastern Standard Time).

ADDRESSES: This meeting will be a virtual meeting.

FOR FURTHER INFORMATION CONTACT: Visit the OVW website at *https://www.justice.gov/ovw/section-904-task-force* or contact Sherriann Moore, Deputy Director of Tribal Affairs, Office on Violence Against Women, United States Department of Justice, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. Title IX of the Violence Against Women Act of 2005 (VAWA 2005), as amended, required the Attorney General to establish a Task Force to assist the National Institute of

Justice (NIJ) to develop and implement a program of research on violence against American Indian and Alaska Native women, including domestic violence, dating violence, sexual assault, stalking, sex trafficking, and murder. The program will evaluate the effectiveness of the federal, state, tribal, and local response to violence against Indian women, and will propose recommendations to improve the government response. The Attorney General, acting through the Director of the Office on Violence Against Women, established the Task Force on March 31, 2008 and the charter has been renewed every two years since then.

More information on the Task Force may be found at *https://www.justice.gov/ovw/section-904-task-force* and about the NIJ program of research at: *https://nij.ojp.gov/topics/articles/violence-against-american-indian-and-alaska-native-women-program-research.*

This meeting will include introduction of new Task Force members, an update on NIJ's program of research, and facilitated Task Force discussion. In addition, the Task Force is also welcoming public oral comment at this meeting and has reserved 30 minutes for this. The meeting will take place on October 22, 2020 from 1:00 p.m. to 5:00 p.m. Time will be reserved for public comment from 4:15 p.m. to 4:45 p.m. See the section below for information on reserving time for public comment.

Access: The meeting will be available online via a video conferencing platform. Members of the public who wish to participate must register in advance of the meeting online, no later than Monday, October 19, 2020. Details about registration can be found on the OVW website: *https://www.justice.gov/ovw/section-904-task-force.* Should issues arise with online registration, or to register by email, the public should contact Sherriann C. Moore, Deputy Director of Tribal Affairs, Office on Violence Against Women, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov.*

Written Comments: Interested parties are invited to submit written comments by October 20, 2020 to Sherriann C. Moore, Deputy Director of Tribal Affairs, Office on Violence Against Women, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov.*

Public Comment: Persons interested in participating during the public comment period of the meeting are requested to reserve time on the agenda by contacting Sherriann C. Moore, Deputy Director of Tribal Affairs, Office on Violence Against Women, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov.* Requests must include the participant's name, organization represented, if appropriate, and a brief description of the subject of the comments. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit written copies of their comments at the meeting. Comments that are submitted to Sherriann C. Moore, Deputy Director of Tribal Affairs, Office on Violence Against Women, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov* before October 20, 2020 will be circulated to Task Force members prior to the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible.

Laura L. Rogers,

Principal Deputy Director, Office on Violence Against Women.

[FR Doc. 2020–22102 Filed 10–6–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Workforce Innovation and Opportunity Act Joint Quarterly Narrative Performance Report

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Workforce Innovation and Opportunity Act Joint Quarterly Narrative Performance Report.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by December 7, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Maya Kelley by telephone at (202) 693–2805 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Kelley.Maya@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Division of Strategic Investments, Room C–4526, 200 Constitution Avenue NW, Washington, DC 20210; by email *Kelley.Maya@dol.gov;* or by fax 202–693–3015.

FOR FURTHER INFORMATION CONTACT: Contact Maya Kelley by telephone at (202) 693–2805 (this is not a toll-free number) or by email at *Kelley.Maya@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Workforce Innovation and Opportunity Act (WIOA) (29 U.S.C. 3101) authorizes this information collection. This ICR allows ETA's Senior Community Service Employment Program (SCSEP) to perform data validation on data collected and reported to ETA on program activities and outcomes; and provides a streamlined WIOA Joint Quarterly Narrative Performance Report (Joint QNR) for several grant programs. DOL seeks a revision of this ICR to include the following changes: ETA has added Office of Apprenticeship grants to the list of grant programs which use the Joint QNR; minor edits have been made to the Joint QNR for streamlining and clarification purposes; and for the SCSEP Data Validation, a few non-substantive changes were made.

The Joint QNR provides a detailed account of program activities, accomplishments, and progress toward performance outcomes during the quarter. It also provides information on grant challenges and timeline progress, as well as the opportunity to share success stories. The continued use of a standardized narrative report supports WIOA implementation and the goal of systems alignment and consistency of reporting. This template also helps ensure consistent identification of

technical assistance needs across the discretionary grant programs that are reporting on WIOA performance indicators, and contributes to improved quality of performance information that ETA receives.

The National Farmworker Jobs Program and YouthBuild grants are authorized under the Workforce Innovation and Opportunity Act of 2014, which identified performance accountability requirements for these grants. The WIOA performance indicators and reporting requirements also apply to the Dislocated Worker Grants program. While H–1B Job Training, Reentry Employment Opportunities, and the DOL Office of Apprenticeship grants are not authorized under WIOA, these programs have adopted the WIOA performance indicators and align with WIOA data element definitions and reporting templates to promote consistency across these DOL-funded programs. The Senior Community Service Employment Program, authorized under the Older Americans Act, as amended (Pub. L. 114–144), has also adopted some of the WIOA performance measures and, for this reason has adopted the WIOA Joint QNR.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0448.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Workforce Innovation and Opportunity Act Joint Quarterly Narrative Performance Report.

Form: Quarterly Narrative Performance Report Template (ETA–9179).

OMB Control Number: 1205–0448.

Affected Public: State, Local, and Tribal Governments, Private Sector.

Estimated Number of Respondents: 1,028.

Frequency: Quarterly.

Total Estimated Annual Responses: 4,112.

Estimated Average Time per Response: Joint QNR: 10 hours; SCSEP Data Validation: 40.5 hours.

Estimated Total Annual Burden Hours: 50,392 hours.

Total Estimated Annual Other Cost Burden: $1,619,259.84.

Authority: 44 U.S.C. 3506(c)(2)(A).

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–22172 Filed 10–6–20; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (20–081)]

Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Advisory Committee (ESAC). This Committee functions in an advisory capacity to the Director, Earth Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, October 22, 2020, 1:30 p.m.–3 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public telephonically. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll free number 1–800–369–1949 or toll number 1–517–308–9360, passcode 4877306, to participate in this meeting by telephone.

The agenda for the meeting includes the following topic:

—Earth Science Program Annual Performance Review According to the Government Performance and Results Act Modernization Act

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–22126 Filed 10–6–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CAPITAL PLANNING COMMISSION

Application by the Libyan Government To Improve the Libyan Embassy

AGENCY: National Capital Planning Commission.

ACTION: Notice of application to the National Capital Planning Commission and public meeting.

SUMMARY: The National Capital Planning Commission (NCPC or Commission) hereby gives notice of its intent to review and either not disapprove, or alternatively, to disapprove an application from the Libyan Government to improve the chancery of the State of Libya located at 1460 Dahlia

Street NW, in the Foreign Missions Center (FMC).

DATES: The application will be reviewed at the Commission's November meeting to be held on November 5, 2020. At the meeting, the public will be able to comment on the proposed application. The meeting will begin at 1 p.m. Parties wishing to speak must register at *www.ncpc.gov/review/meeting/* by not later than 12 p.m. on November 4, 2020. Comments must be addressed solely to the six criteria by which NCPC must evaluate the application. These criteria are listed in this notice under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written public comments on the draft may be submitted electronically (preferred method) or by U.S. Mail as follows:

1. *U.S. mail, courier, or hand delivery:* National Capital Planning Commission, Attention: Office of Public Engagement, 401 9th Street NW, Suite 500N, Washington, DC 20004.

2. *Electronically:* Comments may be posted on-line at *https://www.ncpc.gov/participate/notices/8211/.*

FOR FURTHER INFORMATION CONTACT: Carlton Hart at (202) 482–7252 or *info@ncpc.gov*.

SUPPLEMENTARY INFORMATION: On February 27, 2017, NCPC and the United States Department of State, Office of Foreign Missions (OFM), entered into a Memorandum of Agreement (MOA) addressing how applications for the location, replacement or expansion of chanceries at the Foreign Missions Center (FMC) would be reviewed. The FMC consists of approximately 30 acres of federally owned property at the former Walter Reed National Military Medical Center in Washington, DC. In the MOA, the parties granted NCPC sole authority to review applications for the location, replacement, or expansion of chanceries at the FMC. The MOA requires NCPC's review to undergo notice and comment, and it precludes conducting the review as a formal adjudicatory proceeding. It also requires NCPC to either not disapprove or, alternatively, disapprove the application based on the application of six criteria contained in the Foreign Missions Act (FMA). Those criteria include:

- The international obligation of the United States to facilitate provision of adequate and secure facilities for the foreign mission in the nation's capital;
- substantial compliance with Federal regulations governing historic preservation shall be required with respect to new construction, demolition, or alteration to historic landmarks to ensure compatibility with historic landmarks and districts;
- the adequacy of off-street parking or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary of State (Secretary), after consultation with Federal agencies authorized to perform protective services;
- the extent to which the area is capable of being adequately protected, as determined by the Secretary, after consultation with Federal agencies authorized to perform protective services;
- the municipal interest, as determined by the Mayor of the District of Columbia; and
- the Federal interest, as determined by the Secretary.

In addition to this notice, NCPC will publish a Tentative Agenda for the November 5, 2020 meeting on October 16, 2020 and a final agenda on October 30, 2020. These documents may be found on-line at *https://www.ncpc.gov/review/agenda/.*

Authority: 22 U.S.C. 4306; Memorandum of Agreement by and among the National Capital Planning Commission and the United States Department of State, Office of Foreign Missions, February 27, 2017.

Dated: September 29, 2020.

Anne R. Schuyler,

General Counsel.

[FR Doc. 2020–21821 Filed 10–6–20; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: 2022–2024 IMLS Grant Application Forms

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this notice is to solicit comments concerning the three-year approval of the forms necessary to submit an application to any IMLS grant program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 4, 2020.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone at 202–653–4636, by email at *cbodner@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone at 202–653–4636, by email at *cbodner@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- 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 submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of Federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

The purpose of this collection is to administer the IMLS processes of grants and cooperative agreements, IMLS uses standardized application forms, guidelines and reporting forms for eligible libraries, museums, and other organizations to apply for its funding. These forms submitted for public review in this Notice are the IMLS Museum Program Information Form, the IMLS Library-Discretionary Program Information Form, the IMLS Combination Program Information Form, and the IMLS Supplementary Form. This collection of information from these forms is part of the IMLS grant application process.

Agency: Institute of Museum and Library Services.

Title: Grant Application Forms.

OMB Number: 3137–0092.

Frequency: TBD.

Affected Public: Library and Museum grant applicants.

Number of Respondents: TBD.

Estimated Average Burden per Response: TBD.

Estimated Total Annual Burden: TBD.

Total Annualized capital/startup costs: n/a.

Total Annual Costs: TBD.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: October 2, 2020.

Kim Miller,

Senior Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2020–22212 Filed 10–6–20; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), 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 a CHANGE in the scheduling of a teleconference for the transaction of National Science Board business, as follows:

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 60272, which appeared on September 24, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, September 29, 2020 at 4:30–5:00 p.m. EDT.

CHANGES IN THE MEETING: The new date and time for the meeting are October 14, 2020 from 1:30–2:00 p.m. EDT. Other information about the meeting remains unchanged.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703–292–7000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–22263 Filed 10–5–20; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Request for Information

AGENCY: National Science Foundation.

ACTION: Request for Information.

SUMMARY: The Foundations for Evidence-Based Policymaking Act of 2018 requires federal agencies to develop evidence-building plans to identify and address questions relevant to Agency policies, programs, regulations, management, and operations. Through this Request for Information (RFI), the National Science Foundation (NSF), seeks to expand ongoing efforts to identify priority questions that can guide evidence-building activities by soliciting input from the public.

DATES: Please send comments on or before December 31, 2020. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

ADDRESSES: Submit comments to Suzanne H. Plimpton, Reports Clearance Officer, *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1.800.877.8339, 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION: The Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act, Pub. L. 115–435) requires federal agencies to develop evidence-building plans to identify and address questions relevant to Agency policies, programs, regulations, management, and operations.

Invitation to Comment: NSF invites comments from the public to inform the development of NSF's evidence-building plan. NSF invites suggestions in many forms, as questions to be answered, hypotheses to be tested, or problems to be investigated. NSF will analyze information collected from this RFI to continue developing its evidence-building plan.

1.0 Background

NSF was created ''to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense . . .'' (1950, as amended). NSF seeks to achieve these goals through an integrated strategy that advances the frontiers of knowledge; cultivates a world-class, broadly inclusive science and engineering workforce; expands the scientific literacy of all citizens; builds the nation's research capability through investments in advanced instrumentation and facilities; and supports excellence in science and engineering research and education. NSF by the numbers provides a brief overview of NSF's work. NSF is committed to evaluating the efficacy and efficiency of its strategy, leveraging research and evaluation to help the Agency achieve its mission.

2.0 Request for Information

Through this RFI, NSF is soliciting suggestions from a broad array of stakeholders across public and private sectors that may be familiar with or interested in the work of NSF and wish

to volunteer suggestions to pursue studies that could help NSF improve its efficacy or efficiency. NSF invites suggestions in many forms—as questions to be answered, hypotheses to be tested, or problems to be investigated—and focused on any area of NSF's work, including policy, programs, and operations. Responses to this RFI will inform NSF's ongoing development of a set of questions that will guide evidence-building activities, such as program evaluations and systems to monitor participation in NSF programs. This RFI is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of NSF.

Dated: October 2, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–22141 Filed 10–6–20; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0136, Designation of Beneficiary: Federal Employees' Group Life Insurance, SF 2823

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Federal Employee Insurance Operations, Healthcare Insurance, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request, Designation of Beneficiary: Federal Employees' Group Life Insurance, SF 2823.

DATES: Comments are encouraged and will be accepted until November 6, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to: *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0136) was previously published in the **Federal Register** on March 9, 2020 at 85 FR 13678, allowing for a 60-day public comment period. A comment was received for this collection. In response, per FEGLI law and regulation, employees are not allowed to use electronic signatures or PIV/CAC cards to sign the SF 2823 (Designation of Beneficiary) form. Per 5 CFR 870.802(b), a designation of a beneficiary must be completed in writing, signed by the insured individual, and witnessed and signed by two people. OPM is currently working on guidance for agency human resources personnel to allow more flexibility to certify FEGLI forms. Any changes to the process would be temporary. However, no changes can be made to the Designation of Beneficiary form's signature requirement, as any change to this form would require a change to FEGLI law. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Standard Form 2823 is used by any Federal employee or retiree covered by the Federal Employees' Group Life Insurance (FEGLI) Program, or an assignee who owns an insured's coverage, to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of the FEGLI coverage when the statutory order of precedence does not meet his or her needs.

Analysis

Agency: Federal Employee Insurance Operations, Healthcare Insurance, OPM.

Title: Designation of Beneficiary: Federal Employees' Group Life Insurance.

OMB Number: 3206–0136.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 48,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 12,000.

Office of Personnel Management.

Stephen Hickman,

Deputy Executive Secretary.

[FR Doc. 2020–22153 Filed 10–6–20; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2019–168; MC2021–1 and CP2021–1; MC2021–2 and CP2021–2]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 9, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance

date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2019–168; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 533, Filed Under Seal; *Filing Acceptance Date:* October 1, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Matthew R. Ashford; *Comments Due:* October 9, 2020.

2. *Docket No(s).:* MC2021–1 and CP2021–1; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 170 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 1, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Matthew R. Ashford; *Comments Due:* October 9, 2020.

3. *Docket No(s).:* MC2021–2 and CP2021–2; *Filing Title:* USPS Request to Add First-Class Package Service Contract 113 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 1, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Matthew R. Ashford; *Comments Due:* October 9, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–22152 Filed 10–6–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34039; 812–15089]

Horizon Funds and Horizon Investments, LLC

October 1, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''), and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

APPLICANTS: Horizon Funds (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series (each a ''Fund'') and Horizon Investments, LLC (the ''Initial Adviser''), a South Carolina limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') that serves an investment adviser to the Funds (collectively with the Trust, the ''Applicants'').

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

FILING DATES: The application was filed on January 10, 2020, and amended on July 6, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on October 26, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* The Trust and the Initial Adviser: 6210 Ardrey Kell Road, Suite 300, Charlotte, NC 28277.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Daniele Marchesani, Assistant Chief Counsel at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number or an Applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

I. Requested Exemptive Relief

1. Applicants request an order to permit the Adviser,[1] subject to the approval of the board of trustees of the Trust (collectively, the ''Board''),[2] including a majority of the trustees who are not ''interested persons'' of the Trust or the Adviser, as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), without obtaining shareholder approval, to: (i) Select investment sub-advisers (''Sub-Advisers'') for all or a portion of the assets of one or more of the Funds pursuant to an investment sub-advisory

[1] The term ''Adviser'' means (i) the Initial Adviser, (ii) its successors, and (iii) any entity controlling, controlled by or under common control with, the Initial Adviser or its successors that serves as the primary adviser to a Sub-Advised Fund (as defined below). For the purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The term ''Board'' also includes the board of trustees or directors of a future Sub-Advised Fund (as defined below), if different from the board of trustees of the Trust.

agreement with each Sub-Adviser (each a ''Sub-Advisory Agreement''); and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisers.

2. Applicants also request an order exempting the Sub-Advised Funds (as defined below) from the Disclosure Requirements, which require each Fund to disclose fees paid to a Sub-Adviser. Applicants seek relief to permit each Sub-Advised Fund to disclose (as a dollar amount and a percentage of the Fund's net assets): (i) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; and (ii) the aggregate fees paid to Affiliated and Non-Affiliated Sub-Advisers (''Aggregate Fee Disclosure'').[3] Applicants seek an exemption to permit a Sub-Advised Fund to include only the Aggregate Fee Disclosure.[4]

3. Applicants request that the relief apply to Applicants, as well as to any future Fund and any other existing or future registered open-end management investment company or series thereof that intends to rely on the requested order in the future and that: (i) Is advised by the Adviser; (ii) uses the multi-manager structure described in the application; and (iii) complies with the terms and conditions of the application (each, a ''Sub-Advised Fund'').[5]

II. Management of the Sub-Advised Funds

4. The Adviser serves or will serve as the investment adviser to each Sub-Advised Fund pursuant to an investment advisory agreement with the Fund (each an ''Investment Advisory Agreement''). Each Investment Advisory Agreement has been or will be approved by the Board, including a majority of the Independent Trustees, and by the shareholders of the relevant Sub-Advised Fund in the manner required by sections 15(a) and 15(c) of the Act. The terms of these Investment Advisory Agreements comply or will comply with section 15(a) of the Act. Applicants are not seeking an exemption from the Act with respect to the Investment Advisory Agreements. Pursuant to the terms of each Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, will provide continuous investment management for each Sub-Advised Fund. For its services to each Sub-Advised Fund, the Adviser receives or will receive an investment advisory fee from that Fund as specified in the applicable Investment Advisory Agreement.

5. Consistent with the terms of each Investment Advisory Agreement, the Adviser may, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Sub-Advised Fund (if required by applicable law), delegate portfolio management responsibilities of all or a portion of the assets of a Sub-Advised Fund to a Sub-Adviser. The Adviser will retain overall responsibility for the management and investment of the assets of each Sub-Advised Fund. This responsibility includes recommending the removal or replacement of Sub-Advisers, allocating the portion of that Sub-Advised Fund's assets to any given Sub-Adviser and reallocating those assets as necessary from time to time.[6] The Sub-Advisers will be ''investment advisers'' to the Sub-Advised Funds within the meaning of section 2(a)(20) of the Act and will provide investment management services to the Funds subject to, without limitation, the requirements of sections 15(c) and 36(b) of the Act.[7] The Sub-Advisers, subject to the oversight of the Adviser and the Board, will determine the securities and other investments to be purchased, sold or entered into by a Sub-Advised Fund's portfolio or a portion thereof, and will place orders with brokers or dealers that they select.[8]

6. The Sub-Advisory Agreements will be approved by the Board, including a majority of the Independent Trustees, in accordance with sections 15(a) and 15(c) of the Act. In addition, the terms of each Sub-Advisory Agreement will comply fully with the requirements of section 15(a) of the Act. The Adviser may compensate the Sub-Advisers or the Sub-Advised Funds may compensate the Sub-Advisers directly.

7. Sub-Advised Funds will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Adviser is hired for any Sub-Advised Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [9] and (b) the Sub-Advised Fund will make the Multi-manager Information Statement available on the website identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that website for at least 90 days.[10]

III. Applicable Law

8. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered

[3] A ''Wholly-Owned Sub-Adviser'' is any investment adviser that is (1) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in section 2(a)(43) of the 1940 Act) of the Adviser, (2) a ''sister company'' of the Adviser that is an indirect or direct ''wholly-owned subsidiary'' of the same company that indirectly or directly wholly owns the Adviser (the Adviser's ''parent company''), or (3) a parent company of the Adviser. A ''Non-Affiliated Sub-Adviser'' is any investment adviser that is not an ''affiliated person'' (as defined in the 1940 Act) of a Fund or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to one or more Funds. Section 2(a)(43) of the 1940 Act defines ''wholly-owned subsidiary'' of a person as a company 95 per centum or more of the outstanding voting securities of which are, directly or indirectly, owned by such a person.

[4] Applicants note that all other items required by sections 6–07(2)(a), (b) and (c) of Regulation S–X will be disclosed.

[5] All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application.

[6] Applicants represent that if the name of any Sub-Advised Fund contains the name of a sub-adviser, the name of the Adviser that serves as the primary adviser to the Fund, or a trademark or trade name that is owned by or publicly used to identify the Adviser, will precede the name of the sub-adviser.

[7] The Sub-Advisers will be registered with the Commission as an investment adviser under the Advisers Act or not subject to such registration.

[8] A ''Sub-Adviser'' also includes an investment sub-adviser that provides or will provide the Adviser with a model portfolio reflecting a specific strategy, style or focus with respect to the investment of all or a portion of a Sub-Advised Fund's assets. The Adviser may use the model portfolio to determine the securities and other instruments to be purchased, sold or entered into by a Sub-Advised Fund's portfolio or a portion thereof, and place orders with brokers or dealers that it selects.

[9] A ''Multi-manager Notice'' will be modeled on a Notice of internet Availability as defined in Rule 14a–16 under the 1934 Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser (except as modified to permit Aggregate Fee Disclosure); (b) inform shareholders that the Multi-manager Information Statement is available on a website; (c) provide the website address; (d) state the time period during which the Multi-manager Information Statement will remain available on that website; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Sub-Advised Fund. A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

[10] In addition, Applicants represent that whenever a Sub-Adviser is hired or terminated, or a Sub-Advisory Agreement is materially amended, the Sub-Advised Fund's prospectus and statement of additional information will be supplemented promptly pursuant to rule 497(e) under the Securities Act of 1933.

company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.''

9. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company with respect to each investment adviser, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

10. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the 1934 Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

11. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statements information about investment advisory fees.

12. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

IV. Arguments in Support of the Requested Relief

13. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisers is substantially equivalent to the limited role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants also assert that the shareholders expect the Adviser, subject to review and approval of the Board, to select a Sub-Adviser who is in the best position to achieve the Sub-Advised Fund's investment objective. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Sub-Advised Fund are paying the Adviser—the selection, oversight and evaluation of the Sub-Adviser—without incurring unnecessary delays or expenses of convening special meetings of shareholders is appropriate and in the interest of the Fund's shareholders, and will allow such Fund to operate more efficiently. Applicants state that each Investment Advisory Agreement will continue to be fully subject to section 15(a) of the Act and approved by the relevant Board, including a majority of the Independent Trustees, in the manner required by section 15(a) and 15(c) of the Act.

14. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Sub-Advised Fund in the manner described in the Application must be approved by shareholders of that Fund before it may rely on the requested relief. Applicants also state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest or economic incentives, and provide that shareholders are informed when new Sub-Advisers are hired.

15. Applicants contend that, in the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

16. With respect to the relief permitting Aggregate Fee Disclosure, Applicants assert that disclosure of the individual fees paid to the Sub-Advisers does not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Sub-Advised Fund and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the Sub-Advised Fund's overall advisory fee will be fully disclosed and, therefore, shareholders will know what the Sub-Advised Fund's fees and expenses are and will be able to compare the advisory fees a Sub-Advised Fund is charged to those of other investment companies. In addition, Applicants assert that the requested relief would benefit shareholders of the Sub-Advised Fund because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. In particular, Applicants state that if the Adviser is not required to disclose the Sub-Advisers' fees to the public, the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts. Applicants assert that the relief will also encourage Sub-Advisers to negotiate lower sub-advisory fees with the Adviser if the lower fees are not required to be made public.

V. Relief for Affiliated Sub-Advisers

17. The Commission has granted the requested relief with respect to Wholly-Owned and Non-Affiliated Sub-Advisers through numerous exemptive orders. The Commission also has extended the requested relief to Affiliated Sub-Advisers.[11] Applicants state that although the Adviser's judgment in recommending a Sub-Adviser can be affected by certain conflicts, they do not warrant denying the extension of the requested relief to Affiliated Sub-Advisers. Specifically, the Adviser faces those conflicts in allocating fund assets between itself and a Sub-Adviser, and across Sub-Advisers, as it has an interest in considering the benefit it will receive, directly or indirectly, from the fee the Sub-Advised Fund pays for the management of those assets. Applicants also state that to the extent the Adviser has a conflict of interest with respect to the selection of an Affiliated Sub-Adviser, the proposed conditions are protective of shareholder interests by ensuring the Board's independence and providing the Board with the appropriate resources and

[11] *See Carillon Series Trust and Carillon Tower Advisers, Inc.,* Investment Company Act Rel. Nos. 33464 (May 2, 2019) (notice) and 33494 (May 29, 2019) (order).

information to monitor and address conflicts.

18. With respect to the relief permitting Aggregate Fee Disclosure, Applicants assert that it is appropriate to disclose only aggregate fees paid to Affiliated Sub-Advisers for the same reasons that similar relief has been granted previously with respect to Wholly-Owned and Non-Affiliated Sub-Advisers.

VI. Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Sub-Advised Fund may rely on the order requested in the Application, the operation of the Sub-Advised Fund in the manner described in the Application will be, or has been, approved by a majority of the Sub-Advised Fund's outstanding voting securities as defined in the Act, or, in the case of a Sub-Advised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Sub-Advised Fund's shares are offered to the public.

2. The prospectus for each Sub-Advised Fund will disclose the existence, substance and effect of any order granted pursuant to the Application. In addition, each Sub-Advised Fund will hold itself out to the public as employing the multi-manager structure described in the Application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management services to each Sub-Advised Fund, including overall supervisory responsibility for the general management and investment of the Sub-Advised Fund's assets, and subject to review and oversight of the Board, will (i) set the Sub-Advised Fund's overall investment strategies, (ii) evaluate, select, and recommend Sub-Advisers for all or a portion of the Sub-Advised Fund's assets, (iii) allocate and, when appropriate, reallocate the Sub-Advised Fund's assets among Sub-Advisers, (iv) monitor and evaluate the Sub-Advisers' performance, and (v) implement procedures reasonably designed to ensure that Sub-Advisers comply with the Sub-Advised Fund's investment objective, policies and restrictions.

4. Sub-Advised Funds will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

5. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent Legal Counsel, as defined in Rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

8. The Board must evaluate any material conflicts that may be present in a sub-advisory arrangement. Specifically, whenever a sub-adviser change is proposed for a Sub-Advised Fund (''Sub-Adviser Change'') or the Board considers an existing Sub-Advisory Agreement as part of its annual review process (''Sub-Adviser Review''):

(a) The Adviser will provide the Board, to the extent not already being provided pursuant to section 15(c) of the Act, with all relevant information concerning:

(i) Any material interest in the proposed new Sub-Adviser, in the case of a Sub-Adviser Change, or the Sub-Adviser in the case of a Sub-Adviser Review, held directly or indirectly by the Adviser or a parent or sister company of the Adviser, and any material impact the proposed Sub-Advisory Agreement may have on that interest;

(ii) any arrangement or understanding in which the Adviser or any parent or sister company of the Adviser is a participant that (A) may have had a material effect on the proposed Sub-Adviser Change or Sub-Adviser Review, or (B) may be materially affected by the proposed Sub-Adviser Change or Sub-Adviser Review;

(iii) any material interest in a Sub-Adviser held directly or indirectly by an officer or Trustee of the Sub-Advised Fund, or an officer or board member of the Adviser (other than through a pooled investment vehicle not controlled by such person); and

(iv) any other information that may be relevant to the Board in evaluating any potential material conflicts of interest in the proposed Sub-Adviser Change or Sub-Adviser Review.

(b) the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the Sub-Adviser Change or continuation after Sub-Adviser Review is in the best interests of the Sub-Advised Fund and its shareholders and, based on the information provided to the Board, does not involve a conflict of interest from which the Adviser, a Sub-Adviser, any officer or Trustee of the Sub-Advised Fund, or any officer or board member of the Adviser derives an inappropriate advantage.

9. Each Sub-Advised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

10. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

11. Any new Sub-Advisory Agreement or any amendment to an existing Investment Advisory Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Sub-Advised Fund will be submitted to the Sub-Advised Fund's shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22111 Filed 10–6–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90065; File No. SR–OCC–2020–011]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Adopt a New Second Amended and Restated Cross-Margining Agreement Between The Options Clearing Corporation and The Chicago Mercantile Exchange

October 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2020, The Options Clearing Corporation (''OCC'') 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 OCC. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

This proposed rule change by The Options Clearing Corporation (''OCC'') would adopt a new Second Amended and Restated Cross-Margining Agreement (''Proposed X–M Agreement'') between OCC and the Chicago Mercantile Exchange (''CME''). This proposal is designed to: (1) Update the existing X–M Agreement with the Proposed X–M Agreement to bring it into conformity with current operational procedures and eliminate provisions that are out-of-date; (2) improve the clarity and readability by consolidating certain redundant provisions and moving certain operational details from the existing X–M Agreement to a standalone service level agreement; and (3) streamline and consolidate certain related Clearing Member agreements.

The Proposed X–M Agreement is attached hereto as Exhibit 5 of filing SR–OCC–2020–011. The Proposed X–M Agreement includes the following as appendices each of which is marked to show changes: Proprietary Cross-Margin Account Agreement and Security Agreement; Non-Proprietary Cross-Margin Account Agreement and Security Agreement; and Market Professional's Agreement for Cross-Margining.[3]

This proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this proposed rule change is to adopt a new Second Amended and Restated Cross-Margining Agreement between OCC and CME that would: (1) Update the existing X–M Agreement with the Proposed X–M Agreement to bring it into conformity with current operational procedures and eliminate provisions that are out-of-date; (2) improve the clarity and readability by consolidating certain redundant provisions and moving certain operational details to a standalone service level agreement; and (3) streamline and consolidate certain related Clearing Member agreements.

Background

OCC and CME are currently parties to an Amended and Restated Cross-Margining Agreement dated May 28, 2008, as further amended by Amendment No. 1 dated October 23, 2008[5] and Amendment No. 2 dated May 20, 2009[6] (the ''Existing X–M Agreement''). OCC and CME first implemented their cross-margining program (the ''X–M Program'') in 1989. The purpose of the X–M Program is to: (1) Facilitate the cross-margining of positions in options cleared by OCC with positions in futures and commodity options cleared by CME and (2) address the fact that Clearing Members may have been required to meet higher margin requirements at each clearinghouse than were warranted by the risk of combined positions, because each portfolio was margined separately without regard to positions held in the other portfolio.[7] After the 1987 Market Break, several government reports recommending market structure reforms found that cross-margining arrangements between clearinghouses should be implemented or expanded, because they could have a profound effect on mitigating liquidity stress to key market participants at critical times.[8] For example, the Bachmann Task Force, which was formed at the request of SEC Chairman Breeden to address the issue of safety and soundness of the clearance and settlement system in the United States, published a report on *Clearance and Settlement Reform in the U.S. Securities Markets,* and the staff of the SEC's Division of Market Regulation[9] also published its own report to analyze factors involved in the depth and rapidity of the market decline. Both reports noted that the existence of separate clearinghouses for each market segment increases systemic exposure because no single clearinghouse is able to accurately assess intermarket exposure among its clearing members and among their customers.[10] Accordingly, the Bachmann Report specifically advanced that the cross-margining agreement in place between OCC and CME benefited dual participants with hedged positions with the respective clearing organizations,[11] and it stated that OCC and relevant futures exchanges should be encouraged to expand their cross-margining programs because they ''reduce clearing system risk by substituting correlated positions for cash or cash equivalent margins and provide financing relief and settlement harmonization.'' [12] Since the X–M Program was implemented, the parties have amended it twice.[13]

The Existing X–M Agreement

The Existing X–M Agreement governs OCC and CME's participation in a cross-margining program (the ''X–M Program''), which permits positions in certain futures and futures options contracts cleared by CME to be cleared in a special proprietary or non-proprietary cross-margining account (an ''X–M Account'') at CME, which is then paired with a corresponding X–M

[3] Each of the Clearing Member agreement forms includes a version for Joint and Affiliated Clearing Members.

[4] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules#rule-filings.*

[5] Securities Exchange Act Release No. 58258 (July 30, 2008), 73 FR 46133 (August 7, 2008) (SR–OCC–2008–12) (amending the agreement to, among other things, permit money market fund shares as margin).

[6] Securities Exchange Act Release No. 60063 (June 8, 2009), 74 FR 28738 (June 17, 2009) (SR–OCC–2009–10) (amending the agreement to redefine the term ''Eligible Contracts'' and deleting the list of such contracts attached as Schedule A).

[7] Securities Exchange Act Release Nos. 26607 (March 7, 1989), 48 FR 10608 (March 14, 1989) (SR–OCC–89–1); 27296 (September 26, 1989) (SR–OCC–89–11).

[8] *See Report of the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets,* Submitted to The Chairman of the U.S. Securities and Exchange Commission (May 1992) (the ''Bachmann Report''); *The October 1987 Market Break,* A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (February 1988) (the ''1987 Market Break Report'').

[9] This Division is now known as the Division of Trading and Markets.

[10] *See* Bachmann Report at 11 citing the *Report of the Presidential Task Force on Market Mechanisms* at 64 (January 1988); 1987 Market Break Report at 10–57 (stating that ''[i]n a fully integrated cross-margin account, margin requirements could be fixed to reflect more accurately the net risk of such positions taken as a whole, thus reducing certain margin requirements . . .'').

[11] *See* Bachmann Report at 12.

[12] *See* Bachmann Report at 31.

[13] *See, e.g.,* Securities Exchange Act Release Nos. 32534 (June 28, 1993), 58 FR 36234 (July 6, 1993) (SR–OCC–92–98); 38584 (May 8, 1997), 62 FR 26602 (May 14, 1997); *See also supra* notes 5 and 6.

Account (proprietary or non-proprietary, as the case may be) at OCC, in which securities options contracts are cleared (such contracts, ''Eligible Contracts''). OCC Clearing Members that are also CME members (''Joint Clearing Members''), or that have qualified affiliates that are CME members (''Affiliated Clearing Members''), provided that they have signed the required X–M Program clearing member participation agreement, are permitted to participate in the X–M Program. Currently, there are nine Joint Clearing Members and one pair of Affiliated Clearing Members that participate in the X–M Program. Each Joint Clearing Member or pair of Affiliated Clearing Members electing to participate in the X–M Program and establish a pair of X–M Accounts is required to execute the appropriate account agreements in the forms prescribed by OCC and CME and to designate the account as either ''proprietary'' or ''non-proprietary.'' [14]

Proprietary X–M accounts are confined to the confirmed trades and positions of non-customers of Clearing Members and other proprietary ''market professionals.'' [15] A non-proprietary X–M Account is limited to options market-makers and other ''market professionals.''

Non-proprietary X–M Accounts are treated as futures customer accounts, because they are carried subject to the segregation provisions of Section 4d of the Commodity Exchange Act [16] rather than as securities accounts subject to Rule 15c3–3 [17] and other customer protection rules under the Securities Exchange Act of 1934.[18] X–M Accounts that are paired for purposes of the X–M Program are treated for margin purposes as if they were a single account, making it possible to margin the paired X–M Accounts based on the net risk of the potentially offsetting positions within them. The Existing X–M Agreement governs the calculation, collection, and holding of margin with respect to the paired X–M Accounts, as well as the handling of daily settlement.

The Existing X–M Agreement also addresses how OCC and CME may use the contracts and margin held in X–M Accounts in the event of the default of a Joint Clearing Member or Affiliated Clearing Member. Upon suspending a Joint Clearing Member or Affiliated Clearing Member, the suspending clearinghouse is required to immediately notify the other clearinghouse of the suspension. Both OCC and CME would then immediately liquidate the contracts and margin in each X–M Account carried for the suspended Joint Clearing Member or the Affiliated Clearing Members, unless OCC and CME otherwise agree to delay liquidation or to transfer the contracts. OCC and CME are required to use their best efforts to coordinate the transfer or liquidation of such contracts and to close out any hedged positions simultaneously or, if transferring the positions, to transfer them to the same clearing firm or pair of affiliated clearing firms.

Any funds received by either OCC or CME upon liquidation of the proprietary and non-proprietary X–M Accounts, respectively, may be used to offset expenses arising from the liquidation of such account, and any net proceeds thereafter are to be deposited in a corresponding proprietary or non-proprietary liquidating account established jointly by OCC and CME. The funds in a proprietary or non-proprietary liquidating account are to be used only to set off any liquidating deficits or settlement obligations remaining with respect to the corresponding proprietary or non-proprietary X–M Account, respectively. To the extent the proprietary liquidating account has a surplus, after satisfying all deficits and obligations, the proceeds may be applied to set off any net liquidating deficits or settlement obligations arising from the Clearing Member's non-proprietary X–M Accounts at OCC or CME.

After these offsets, if a liquidating account still has a deficit, each of OCC and CME bear 50% of the remaining shortfall. If a proprietary liquidating account has a surplus, OCC and CME each are entitled to 50% of the surplus to satisfy any losses whatsoever arising from the other obligations of the defaulting Clearing Member. However, if one clearinghouse's net loss is less than 50% of the remaining surplus and the other's is greater, the former is only entitled to the surplus up to the amount of its loss, and the latter is entitled to receive the balance up to the amount of its loss. After all of this, if any amounts remain in the liquidating accounts, such funds are returned to the Joint Clearing Member or pair of Affiliated Clearing Members or their respective representatives.

The Proposed X–M Agreement

The Proposed X–M Agreement retains the same basic framework described above regarding the Existing X–M Agreement, and it would not fundamentally alter the scope of the X–M Program or the rights and responsibilities of OCC and CME. The primary purposes for proposing to update the Existing X–M Agreement with the Proposed X–M Agreement are to: (1) Bring the Existing X–M Agreement into conformity with current operational procedures; (2) eliminate provisions in the Existing X–M Agreement that are out-of-date; and (3) improve the clarity and readability of the agreement by consolidating redundant provisions. The Proposed X–M Agreement would also move several of the operational details regarding the X–M Accounts to the OCC–CME Cross-Margining Service Level Agreement (''SLA''). OCC and CME believe that having such operational details in a separate document produces a more streamlined Proposed X–M Agreement that would be easier to comprehend and that would therefore allow OCC and CME to more easily review the service levels and modify them as appropriate without having to amend the entire Proposed X–M Agreement. OCC believes that these changes would make the Proposed X–M Agreement and SLA easier to read and comprehend and would promote consistency with the requirement in Rule 17Ad–22(e)(1) [19] that OCC must establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, provide for a well-founded, clear and transparent legal basis for each aspect of its activities.

Key changes from the Existing X–M Agreement to the Proposed X–M Agreement are described in detail below.

Eligible Contracts and Accepted Transactions

The Proposed X–M Agreement would not change the scope of products eligible for participation in the X–M Program. However, it would include a definition of ''Eligible Contracts'' in Section 1 that conforms with the substance of the definition that was adopted in 2009 as part of Amendment

[14] The Existing X–M Agreement also permits the establishment of ''X–M Pledge Accounts,'' which are X–M Accounts in respect of which the Clearing Member grants a security interest in all contracts purchased or carried in the particular account to a bank, as security for a loan. X–M Pledge Accounts may be either proprietary or non-proprietary. The New X–M Agreement would eliminate the ability to establish such X–M Pledge Accounts because they are no longer being used. Historically, pledge accounts were only used for the purpose of supporting the pledging of money market mutual fund shares as collateral. Now that money market mutual fund shares are not acceptable collateral for the XM Program, there is no longer a need for the use of X–M Pledge Accounts.

[15] *See* OCC By-Laws Article I, Section 1.O.(1).

[16] 7 U.S.C. 6d.

[17] 17 CFR 240.15c3–3.

[18] 17 CFR 240.8c–1; 17 CFR 240.15c2–1.

[19] 17 CFR 240.17Ad–22(e)(1).

No. 2 to the Existing X–M Agreement.[20] Consistent with these changes, the definition of ''Eligible Contracts'' in the Proposed X–M Agreement would include any contracts that have been ''jointly designated'' by OCC and CME as eligible for inclusion in the list of eligible contracts jointly maintained by OCC and CME. Prior to designating a new set of contracts as Eligible Contracts, OCC and CME would be required to evaluate and approve the additional contracts through internal processes that consider each clearing organization's risk policies.

Section 1 of the Proposed X–M Agreement would also be amended to introduce the new defined term ''Accepted Transaction'' and to provide a mechanism for confirming what specific transactions are subject to the Proposed X–M Agreement. The purpose of this change is not to change the scope of the X–M Program but rather to provide certainty and clarity regarding the specific transactions—the ''Accepted Transactions''—for which OCC and CME would be jointly responsible. ''Accepted Transactions'' would be defined to include all positions that are Eligible Contracts and have been included on the ''daily margin detail report'' generated by OCC and transmitted to CME. Positions included in the ''daily margin detail report'' would be deemed to be the final record of positions in which OCC and CME are obligated under the Proposed X–M Agreement.

The Service Level Agreement

As part of the update to the Proposed X–M Agreement, certain operational terms previously covered in the Existing X–M Agreement would be addressed in the SLA. For example, this includes provisions from the Existing X–M Agreement in Section 6 regarding acceptable forms of collateral, Section 7 regarding the timing, methods and forms of daily settlement procedures, and Section 15 regarding OCC and CME's commitment to share information regarding Joint and Affiliated Clearing Members, banks, and their own financial status. The Proposed X–M Agreement would address the existence of this SLA in a proposed Section 2, stating that all ''times, methods and forms of deliveries, notification and consents'' pertaining to the X–M Program and X–M Accounts are provided for in the SLA. CME and OCC would also agree to review the SLA at least annually.

Account Structure

The same basic account structure in Section 2 of the Existing X–M Agreement would still be used in Section 3 of the Proposed X–M Agreement. Proprietary and/or non-proprietary paired clearing accounts would still be established for Joint and Affiliated Clearing Members that participate in the X–M Program, and OCC and CME would continue to have a joint security interest in the contracts, margin, and other property held in the joint accounts. However, as noted above, the Proposed X–M Agreement would remove all references to X–M Pledge Accounts because such accounts are no longer in use. Along with removing all references to such accounts throughout the Proposed X–M Agreement, Section 3 of the Existing X–M Agreement, entitled ''Establishment of X–M Pledge Accounts,'' would be deleted in its entirety.

The Proposed X–M Agreement would also change some of the defined terms that are used to describe the accounts related to the X–M Program to describe their purpose more accurately. For example, the ''Proprietary Joint Settlement Account'' and ''Segregated Joint Margin Account'' would be referred to as the ''Proprietary Joint Margin Cash Account'' and ''Segregated Joint Margin Cash Account,'' and the ''Proprietary Joint Custody Account'' and ''Segregated Joint Custody Account'' would be referred to as the ''Proprietary Joint Margin Custody Account'' and ''Segregated Joint Margin Custody Account.'' The terms ''Proprietary Bank Account'' and ''Segregated Funds Bank Account'' would also be added to the defined terms section for readability and consistency, though they were already used in the body of the Existing X–M Agreement. The proposed addition of such terms to the defined terms section would not change for the purposes of the agreement. The defined term ''Liquidating Accounts'' would also be added to the agreement to cover the Non-Proprietary and Proprietary Liquidating Accounts created in the event of a Clearing Member suspension and liquidation.

Margin and Posted Collateral

The Proposed X–M Agreement would replace the provisions in Section 5 of the Existing X–M Agreement regarding the methodology for determining the initial margin requirements for each X–M Account with a statement that, with respect to each pair of X–M Accounts, the amount of cash, securities or other property required to be deposited as collateral would be determined by using OCC's approved margin methodology, as in effect as of the date of the Proposed X–M Agreement. As a practical matter, this change would not represent a change from the existing operation of the X–M Program because, consistent with the authority in Section 5, CME already elects to use the margin calculation that is produced by OCC. The Proposed X–M Agreement would also require OCC to provide 30 calendar days prior notice to CME of any proposed changes to OCC's margin methodology, and any changes to the way collateral requirements are calculated with respect to X–M Accounts would be required to be agreed upon in writing in advance by OCC and CME. The Proposed X–M Agreement would also specify that OCC and CME would each determine the net amount of premiums, exercise settlement amounts, and variation margin due for its respective products because the determination is made based upon the products cleared by OCC and CME, and adopts the defined terms ''Net Pay/Collect'' to refer to such amount. Each clearinghouse would be required to notify the other of the Net Pay/Collect amount in accordance with the SLA.

Like under the Existing X–M Agreement, OCC and CME would each still have the ability to charge additional margin at any amount as it deems appropriate without the consent of the other and each would be responsible for determining the adequacy of the margin requirement for each cross-margin account.

As discussed above, Section 6 of the Proposed X–M Agreement would no longer specify the eligible forms of initial margin, instead referring to the SLA. The SLA would revise the list of eligible collateral to include cash, treasuries, and letters of credit from pre-approved U.S. depository institutions, and eliminate the eligibility of government sponsored entity debt and money market funds. OCC and CME are proposing to eliminate the eligibility of these instruments because, in practice, OCC no longer accepts them as collateral for the X–M Program. This is because no money market mutual funds currently meet OCC's requirements for such margin assets set forth in OCC Rule 604(b)(3), and OCC's liquidity facilities do not currently accept government sponsored entity debt as collateral. Consequently, all references to government sponsored entity debt and money market funds are removed from the Proposed X–M Agreement. The Proposed X–M Agreement would also clarify that the more conservative limits

[20] *See supra* note 13.

would apply to the extent OCC and CME's rules with respect to concentration limits for eligible margin differ. Furthermore, if OCC reduces any of its required haircuts for eligible margin below CME's required haircuts, OCC is required to provide prompt notice to CME.

The Proposed X–M Agreement would also provide that OCC and CME would each be permitted to invest any cash deposited as collateral in their joint margin cash accounts overnight in certain eligible investments and with certain custodians, depositories, and counterparties, as OCC and CME may mutually agree, with each clearinghouse sharing equally in any proceeds received, or losses incurred, from such overnight investments. This formalizes the existing practice of OCC and CME and provides clarity that OCC and CME share equally in any proceeds or losses from overnight investments.

Additionally, the Proposed X–M Agreement would no longer use the term ''Margin'' or ''Initial Margin'' with respect to the collateral deposited in an X–M Account. Instead, it would use the term ''Posted Collateral.'' OCC proposes the change because it is a more accurate characterization of the margin requirement set by OCC's System for Theoretical Analysis and Numerical Simulations (''STANS'')—which is the methodology used to determine the collateral requirement for the X–M Program and does not produce a separate Initial Margin requirement. References to margin requirements and deficits or surpluses in respect to such requirements are proposed to be replaced with references to the defined terms ''Collateral Requirement,'' ''Collateral Deficit,'' and ''Collateral Excess,'' respectively.

Daily Settlement

Section 7 of the Proposed X–M Agreement would be revised to increase the time OCC and CME would have to provide approval or non-approval of revised Settlement Instructions from 15 minutes to 30 minutes. Based on OCC and CME's experience operating the X–M Program, OCC believes the change from 15 to 30 minutes would provide additional time which would be useful during the process of performing a full review of any revised Settlement Instructions and making determinations for approval or non-approval of the revised Settlement Instructions. Furthermore, OCC has determined that the proposed change to add additional time to review revised Settlement Instructions will not negatively impact on the timing of other processes performed under the Proposed X–M Agreement.

As described above, details regarding the timing, methods, and form of daily settlement in the X–M Accounts have been moved to the SLA, and Section 7 of the Proposed X–M Agreement would be amended to reflect that fact. Section 7 would also be amended to conform to existing reporting practices for OCC and CME with respect to settlement. For example, under the Existing X–M Agreement each clearing organization issues a ''Margin and Settlement Report'' to each Joint Clearing Member or pair of Affiliated Clearing Members for which it is the Designated Clearing Organization. However, in practice, OCC has been the only Designated Clearing Organization. Accordingly, the related provisions would be modified so that the information contained in that report is only provided by OCC to the Clearing Members. The definition of ''Margin and Settlement Report'' in Section 1 of the Proposed X–M Agreement is correspondingly modified and would refer to the report more specifically as the ''Account Summary by Clearing Corporation Report.''

The Proposed X–M Agreement would also update Section 7 to provide for the communication of intra-day instructions to X–M clearing banks with respect to the X–M Accounts, to facilitate the deposit of collateral in response to an intra-day margin call from CME or OCC. A defined term for ''Intra-day Instruction'' would also be added to Section 1 to accommodate this change.

Suspension and Liquidation

Section 8 of the Proposed X–M Agreement essentially retains the Existing X–M Agreement's procedures for the handling of X–M Accounts in the event of the default of a Joint Clearing Member or pair of Affiliated Clearing Members, as described above, with certain modifications. First, paragraphs 8(a) and (b) would be revised to state more generally that each clearinghouse will follow its own rules with respect to the default of a Clearing Member; provided, however, that each clearinghouse would also use its best efforts to coordinate with the other clearinghouse regarding the liquidation or transfer of Accepted Transactions. The proposed changes that expressly provide that each clearinghouse would follow its own rules with respect to the default of a Clearing Member are not intended to substantively change the terms in the Existing X–M Agreement. Instead, they are meant to provide each clearinghouse with greater flexibility to amend their suspension and liquidation procedures pursuant to the normal rule change process without having to also amend the Proposed X–M Agreement. The Proposed X–M Agreement also now expressly contemplates the potential use of a joint liquidating auction with respect to X–M Accounts during a Clearing Member default scenario.

Second, new sections 8(c) and (d) would be added to the Proposed X–M Agreement to provide that upon the suspension of a defaulted Clearing Member, the clearinghouses would establish a plan pursuant to which Accepted Transactions of the Clearing Member would be liquidated or transferred. The plan would be required, at a minimum, to (i) identify the primary point of contact at each clearinghouse responsible for coordinating communications and actions related to the plan; (ii) current-day settlement information related to the suspended Clearing Member; and (iii) whether any transactions in addition to Accepted Transactions would be guaranteed. If by the close of the markets on the business day that follows the last successful margin collection for the suspended Clearing Member the clearinghouses do not take action under a plan or have not otherwise established a plan, then the clearinghouses would be required to take certain steps to transfer cleared contracts prior to the open of trading on the next business day. Specifically, contracts cleared by each respective clearinghouse would be transferred into an account under its control to allow that clearinghouse to liquidate or transfer the contracts pursuant to its rules. The closing prices for the cleared contracts used to determine final proceeds and any liquidity obligations of the clearinghouses would be the prices as of the business day that immediately follows the last successful margin collection for the suspended Clearing Member.

Third, Section 8 would also be revised to provide that each of OCC and CME agree to enter into any agreements reasonably necessary to ensure that the other can obtain liquidity during a default scenario and will be jointly and equally responsible for providing liquidity to ensure all obligations of a non-defaulting Clearing Member with respect to the X–M Accounts on a timely basis. OCC believes this change would help ensure OCC and CME have sufficient access to liquidity and thereby provide for efficient and effective default management in the event of a Clearing Member default.

Finally, OCC and CME also would agree to conduct joint default management drills for the cross-margin accounts at least annually. OCC believes

that this change would promote consistency with the requirement in Rule 17Ad–22(e)(13) that OCC as a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to ''[e]nsure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring [its] participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedure, at least annually and following material changes thereto.'' [21]

Miscellaneous Changes

Regarding other changes, first the ''Recitals'' to the Proposed X–M Agreement would be updated to reflect OCC and CME's respective SEC and CFTC registration statuses and designations as systemically important by the Financial Stability Oversight Council. Related to this, defined terms would be added for ''FSOC,'' ''Dodd Frank Act,'' ''DCO,'' ''Exchange Act,'' and ''SEC.''

Second, Section 9 of the Proposed X–M Agreement would be amended to clarify that the requirement that one clearinghouse notify the other when it becomes subject to a court order to disclose ''confidential information'' is only required if it is permitted by law.

Third, Section 10 of the Proposed X–M Agreement would rephrase the section to only reference Losses because the definition of Losses under the Proposed X–M Agreement would be revised to include claims and other potential loss events.

Fourth, Section 13 of the proposed agreement would change the process and timing related to termination of the agreement because OCC and CME believe the revised language would reduce risk in the event of a termination.

Fifth, the Proposed X–M Agreement would also revise Section 14, to clarify that while OCC and CME are not permitted to reject any transaction effected in an X–M Account without the other's express consent, this condition would not interfere with their respective abilities to implement recovery and orderly wind-down plans under their own rules, as required under Rule 17Ad–22(e)(3)(ii) [22] and CFTC Rule 39.39(b).[23]

Sixth, as discussed above in the description of the SLA, Section 15 of the Existing X–M Agreement regarding information sharing between OCC and CME would be deleted from the Proposed X–M Agreement and moved to the SLA. OCC believes the more succinctly drafted language in the SLA maintains consistent rights and/or obligations for OCC and CME to share information which will continue to allow OCC and CME to efficiently manage the risks presented by Joint and Affiliated Clearing Members.

Seventh, Section 15 of the Proposed X–M Agreement regarding notifications differs from the corresponding provisions in Section 16 of the Existing X–M Agreement, in that it would allow for the use of electronic mail to satisfy notice requirements, except with respect to notifications relating to the termination of the Proposed X–M Agreement. It would also eliminate facsimile as an appropriate method of communication. OCC believes this change conforms to current communication procedures and standards and ensures notices will be received in a timely manner through a communication method that is monitored regularly.

Finally, the Proposed X–M Agreement would also add Section 17 to clarify that each of OCC and CME would be responsible for obtaining their own regulatory approvals in connection with the implementation of the Proposed X–M Agreement.

Additional Changes To Defined Terms

In addition to the proposed and modified defined terms described above, the Proposed X–M Agreement would make certain additional modifications to Section 1 of the Existing X–M Agreement. Many of these are non-substantive, including adding defined terms that are already used and defined elsewhere in the Existing X–M Agreement but that are not currently listed in Section 1—*e.g.,* the defined terms ''AAA,'' ''Affiliated Clearing Member,'' ''CME Clearing Member,'' ''CME Rules,'' ''Confidential Information,'' ''Indemnitor,'' ''Indemnified Party,'' ''Losses,'' ''OCC Clearing Member,'' and ''OCC Rules.'' The Proposed X–M Agreement would also modify the definition of ''Affiliate'' to remove the statement that 10% ownership of common stock will be deemed *prima facie* control of that entity for purposes of determining whether an entity is under direct or indirect control of a Clearing Member, to instead reflect that OCC and CME believe that a facts-and-circumstances approach is more appropriate. The definition of ''Business Day'' would be modified to provide that when one or more markets on which cleared contracts trade are closed but banks are open, OCC and CME would each make their own determination regarding whether and to what extent to treat any such day as a Business Day for purposes of Section 7 of the Proposed X–M Agreement regarding daily settlements.

Clearing Member Agreements

In conjunction with the streamlining efforts at the heart of the Proposed X–M Agreement, OCC is proposing to consolidate certain of the template Clearing Member agreements that it maintains for the X–M Program. As noted above, a Clearing Member that intends to participate in the X–M Program must execute the appropriate Clearing Member agreement. Currently, there are six such template agreements, and the appropriate agreement for the participating Clearing Member depends on the type of account it will be using as its X–M Account (*i.e.,* proprietary, non-proprietary, or market professional) and whether the Clearing Member will be participating in the X–M Program as a Joint Clearing Member or with an Affiliated Clearing Member. To maintain fewer templates and streamline the Clearing Member documentation, the six template agreements would be consolidated into three. Specifically, Joint Clearing Members and Affiliated Clearing Members would use the same template agreement for the appropriate account type (*i.e.,* proprietary, non-proprietary, or market professional). The revised Clearing Member agreements include language providing for OCC and CME's ability to move positions between Clearing Member accounts, as necessary, based upon Clearing Member instruction, to maintain positions in the appropriate account type. The substance of the agreements is not otherwise being altered.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act [24] and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[25] OCC believes that the proposal is consistent with this requirement for the following reasons.

[21] 17 CFR 240.17Ad–22(e)(13).

[22] 17 CFR 240.17Ad–22(e)(3)(ii).

[23] 17 CFR 39.39(b).

[24] 15 U.S.C. 78q–1.

[25] 15 U.S.C. 78q–1(b)(3)(F).

The proposed change would improve the clarity and transparency of the Existing X–M Agreement by moving several of the operational details to an SLA to produce a more streamlined Proposed X–M Agreement that would be easier to comprehend. Maintaining a separate SLA would also allow OCC and CME to more easily review the service levels and modify them as appropriate without having to amend the entire Proposed X–M Agreement—improving the ease with which the parties would be able to keep the legal requirements of X–M Program consistent with evolving operational needs. Further, as described above, certain aspects of the Existing X–M Agreement would be clarified to reflect current practice. For example, the Proposed X–M Agreement would remove provisions related to the X–M Pledge Accounts to reflect the fact that they are no longer used. Also, the Proposed X–M Agreement would modify provisions related to the calculation of the margin requirements for X–M Accounts to reflect the fact that OCC's margin methodology has historically been and will continue to be the margin methodology that is used.

Section 17A(b)(3)(F) of the Act also requires that the rules of a clearing agency be designed, in general, to protect investors and the public interest.[26] OCC believes the proposal is consistent with this requirement because, under the Proposed X–M Agreement, the X–M Program would continue to benefit dual participants with hedged positions at the respective clearing organizations by permitting them to meet margin requirements that are based on the risk of the combined positions.

Rule 17Ad–22(e)(20) [27] requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to ''identify, monitor, and manage risks related to any link [28] the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.'' OCC and CME have each been designated as systemically important financial market utilities and OCC believes that the X–M Program meets the definition of a ''link'' for this purpose. Replacing the Existing X–M Agreement with a Proposed X–M Agreement that better reflects OCC and CME's current operational procedures, and which relocates several of the operational details to an SLA that allows them to be reviewed and updated on a more regular basis, furthers the purpose of identifying and managing risks arising from the OCC–CME linkage and therefore promotes robust risk management and reducing systemic risk. Accordingly, OCC believes that adopting the Proposed X–M Agreement is consistent with Rule 17Ad–22(e)(20).[29]

OCC also believes that the proposed change would promote compliance with Rule 17Ad–22(e)(1),[30] which requires OCC as a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ''provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.'' The Proposed X–M Agreement would move several of the operational details regarding the X–M Accounts to a standalone SLA, which OCC believes would produce a more streamlined Proposed X–M Agreement that would be easier to comprehend. The proposed change would also allow OCC and CME to more easily review the service levels and modify them as appropriate without having to amend the entire Proposed X–M Agreement—thereby promoting the ability of the parties to keep the agreements that are the legal basis for the X–M Program consistent with evolving operational needs. Accordingly, OCC believes that the proposed change is consistent with Rule 17Ad–22(e)(1).

OCC further believes that the proposed change would promote compliance with Rule 17Ad–22(e)(13),[31] which requires OCC as a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ''ensure [it] has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring [its] participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.'' The Proposed X–M Agreement specifically requires OCC and CME to conduct joint default management drills with respect to the X–M Account at least annually. It also includes new language providing that each of OCC and CME will enter into any agreements reasonably necessary to ensure that the other can obtain liquidity during a default scenario and that they will be jointly and equally responsible for providing liquidity to ensure all obligations of non-defaulting Clearing Members with respect to the X–M Accounts on a timely basis. These changes are specifically designed to ensure OCC and CME retain operational capacity with respect to the X–M Program during a Clearing Member default, and OCC accordingly believes they are consistent with Rule 17Ad–22(e)(13).

OCC also believes that the proposed change would promote compliance with Rule 17Ad–22(e)(17),[32] which requires OCC as a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ''manage the covered clearing agency's operational risks by,'' among other things, ''identifying the plausible sources of operational risk . . . and mitigating their impact through the use of appropriate systems, policies, procedures, and controls [and] ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.'' As described above, certain aspects of the Existing X–M Agreement do not reflect current operational realities with respect to the X–M Program, which potentially could be a source of operational risk to OCC. OCC believes that the Proposed X–M Agreement would reduce this potential source of operational risk by removing and updating provisions and requirements that are out of date, like those related to determining the margin requirements for an X–M Account or various required methods of communication and notification. Accordingly, OCC believes that the proposed change is consistent with Rule 17Ad–22(e)(17). In these ways, OCC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Act [33] and Rules 17Ad–22(e)(1), (13), (17), and (20).[34]

[26] *Id.*

[27] 17 CFR 240.17Ad–22(e)(20).

[28] A ''link'' for purposes of Rule 17Ad–22(e)(20) means ''a set of contractual and operational arrangements between two or more clearing agencies, *financial market utilities,* or trading markets that connect them directly or indirectly for the purposes of participating in settlement, *cross margining,* expanding their services to additional instruments or participants, or for any other purposes material to their business.'' [emphasis added.] *See* 17 CFR 240.17Ad–22(a)(8).

[29] 17 CFR 240.17Ad–22(e)(20).

[30] 17 CFR 240.17Ad–22(e)(1).

[31] 17 CFR 240.17Ad–22(e)(13).

[32] 17 CFR 240.17Ad–22(e)(17).

[33] 15 U.S.C. 78q–1(b)(3)(F).

[34] 17 CFR 240.17Ad–22(e)(1), (13), (17), and (20).

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [35] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposal would impose any burden on competition.[36] The primary purpose of the proposed rule change is to update and clarify the existing X–M Agreement to reflect current practices and also streamline Clearing Member agreements. The proposed rule change would not affect any individual Clearing Member's current rights or ability to access OCC services or disadvantage or favor any particular user in relationship to another. As such, OCC believes that the proposed changes would not have any impact or impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed change and none have been received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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–OCC–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–OCC–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 filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules#rule-filings.*

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–OCC–2020–011 and should be submitted on or before October 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22096 Filed 10–6–20; 8:45 am]

BILLING CODE 8011–01–P

[35] 15 U.S.C. 78q–1(b)(3)(I).

[36] *Id.*

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90062; File No. SR–CBOE–2020–075]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Make Qualified Contingent Cross Orders Available for FLEX Trading

October 1, 2020.

On August 3, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make Qualified Contingent Cross Orders available for FLEX trading. The proposed rule change was published for comment in the **Federal Register** on August 20, 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 October 4, 2020.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposal so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates November 18, 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–CBOE–2020–075).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89564 (August 14, 2020), 85 FR 51531.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22095 Filed 10–6–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90073; File No. 4–533]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the National Market System Plan for the Selection and Reservation of Securities Symbols To Add MIAX PEARL LLC as a Party Thereto

October 1, 2020.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on September 8, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the National Market System Plan for the Selection and Reservation of Securities Symbols (''Symbology Plan'' or ''Plan'').[3] The amendment proposes to add MIAX PEARL as a party to the Symbology Plan. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Description and Purpose of the Amendment

The current parties to the Symbology Plan are BOX Options Exchange, LLC (''BOX''), Nasdaq BX, Inc. (''BX''), Cboe BZX Exchange, Inc. (''CboeBZX''), Cboe EDGA Exchange, Inc. (''CboeEDGA''), Cboe EDGX Exchange, Inc. (''CboeEDGX''), Cboe Exchange, Inc. (''Cboe''), CHX, FINRA, Investors Exchange, LLC (''IEX''), Miami International Securities Exchange, LLC (''MIAX''), Nasdaq ISE, LLC (''ISE''), Nasdaq, New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE National, NYSE Arca, Inc. (''NYSE Arca''), Phlx, Long-Term Stock Exchange (''LTSE''), and MEMX LLC (''MEMX'').[4] The proposed amendment to the Symbology Plan would add MEMX as a party to the Symbology Plan. A self-regulatory organization (''SRO'') may become a party to the Symbology Plan if it satisfies the requirements of Section I(c) of the Plan. Specifically, an SRO may become a party to the Symbology Plan if: (i) It maintains a market for the listing or trading of Plan Securities [5] in accordance with rules approved by the Commission; (ii) it signs a current copy of the Plan; and (iii) it pays to the other parties a proportionate share of the aggregate development costs, based upon the number of symbols reserved by the new party during the first twelve (12) months of such party's membership.[6]

MIAX PEARL has submitted a signed copy of the Symbology Plan to the Commission in accordance with the requirement set forth in the Symbology Plan regarding new parties to the plan. Additionally, MIAX PEARL has represented that it maintains a market for the listing or trading of Plan Securities. Finally, MIAX PEARL has agreed to pay all costs required by MIAX PEARL pursuant to the Symbology Plan, including its proportionate share of the aggregate development costs previously paid by the other parties to the Processor.

II. Effectiveness of the Proposed Symbology Plan Amendment

The foregoing proposed Symbology Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) [7] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment is consistent with the 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 4–533 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–533. This file number should be included on the subject line if email is used. To help the Commission

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On November 6, 2008, the Commission approved the Symbology Plan that was originally proposed by the Chicago Stock Exchange, Inc. (''CHX''), The Nasdaq Stock Market, Inc. (n/k/a The Nasdaq Stock Market LLC) (''Nasdaq''), National Association of Securities Dealers, Inc. (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc. (''FINRA'')), National Stock Exchange, Inc. (''NSX'') (n/k/a NYSE National, Inc. (''NYSE National'')), and Philadelphia Stock Exchange, Inc. (n/k/a Nasdaq PHLX LLC (''Phlx'')), subject to certain changes. *See* Securities Exchange Act Release No. 58904, 73 FR 67218 (November 13, 2008) (File No. 4–533).

[4] On November 18, 2008, ISE filed with the Commission an amendment to the Plan to add ISE as a member to the Plan. *See* Securities and Exchange Act Release No. 59024 (November 26, 2008), 73 FR 74538 (December 8, 2008) (File No. 4–533). On December 22, 2008, NYSE, NYSE Arca, and NYSE Alternext (n/k/a NYSE American) (''NYSE Group Exchanges''), and Cboe filed with the Commission amendments to the Plan to add the NYSE Group Exchanges and Cboe as members to the Plan. *See* Securities Exchange Act Release No. 59162 (December 24, 2008), 74 FR 132 (January 2, 2009) (File No. 4–533). On December 24, 2008, BSE (n/k/a BX) filed with the Commission an amendment to the Plan to add BSE as a member to the Plan. *See* Securities Exchange Act Release No. 59187 (December 30, 2008), 74 FR 729 (January 7, 2009) (File No. 4–533). On September 30, 2009, BATS (n/k/a CboeBZX) filed with the Commission an amendment to the Plan to add BATS as a member to the Plan. *See* Securities Exchange Act Release No. 60856 (October 21, 2009), 74 FR 55276 (October 27, 2009) (File No. 4–533). On July 7, 2010, EDGA (n/k/a CboeEDGA) and EDGX (n/k/a CboeEDGX) filed with the Commission an amendment to the Plan to add EDGA and EDGX, each as a party to the Symbology Plan. *See* Securities Exchange Act Release No. 62573 (July 26, 2010), 75 FR 45682 (August 3, 2010) (File No. 4–533). On May 7, 2012, BOX filed with the Commission an amendment to the Plan to add BOX as a member to the Plan. *See* Securities and Exchange Act Release No. 66957 (May 10, 2012), 77 FR 28904 (May 16, 2012). On November 4, 2016, IEX filed with the Commission an amendment to the Plan to add IEX as a member to the Plan. *See* Securities Exchange Act Release No. 79422 (November 29, 2016), 81 FR 87645 (December 5, 2016). On February 26, 2018, MIAX filed with the Commission an amendment to the Plan to add MIAX as a member to the Plan. *See* Securities Exchange Act Release No. 82885 (March 15, 2018), 83 FR 12430 (March 21, 2018). On October 17, 2019, LTSE filed with the Commission an amendment to the Plan to add LTSE as a member to the Plan. *See* Securities Exchange Act Release No. 87597 (November 22, 2019), 84 FR 65448 (November 27, 2019). On July 6, 2020, MEMX filed with the Commission and amendment to the Plan to add MEMX as a member to the Plan. *See* Securities Exchange Act Release No. 89419 (July 29, 2020), 85 FR 46767 (August 3, 2020).

[5] ''Plan Securities'' are defined in the Symbology Plan as securities that: (i) Are NMS securities as currently defined in Rule 600(a)(46) under the Act; and (ii) any other equity securities quoted, traded and/or trade reported through an SRO facility.

[6] Sections I(c) and V(a) of the Plan.

[7] 17 CFR 242.608(b)(3)(iii).

[8] 17 CFR 242.608(b)(1).

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 Plan that are filed with the Commission, and all written communications relating to the Plan 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 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchanges. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–533, and should be submitted on or before October 28, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22121 Filed 10–6–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 62777, October 5, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, October 7, 2020 at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Wednesday, October 7, 2020 at 10:00 a.m. has been changed to Wednesday, October 7, 2020 at 11:15 a.m.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: October 5, 2020.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2020–22294 Filed 10–5–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90067; File No. SR–FINRA–2020–031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Delete the Rules Related to the OTC Bulletin Board Service

October 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2020, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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

FINRA is proposing to delete the rules related to the OTC Bulletin Board® Service (''OTCBB'') and cease its operation, and to enhance the regulation of quotations in OTC Equity Securities by adopting new requirements for member inter-dealer quotation systems.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA is proposing new FINRA Rule 6439 (Requirements for Inter-Dealer Quotation Systems) to expand and enhance the obligations of member firms that operate certain systems that regularly disseminate the quotations of identified broker-dealers in OTC Equity Securities[3] (''inter-dealer quotation systems'').[4] The proposed rule change also deletes the rules related to the OTCBB and ceases its operation, as further discussed below.

Background

Section 15A of the Act provides that FINRA, among other things, must have rules governing the form and content of quotations for securities sold otherwise than on an exchange, which includes OTC Equity Securities. Specifically, Section 15A(b)(11) requires that such rules be designed to: (1) Produce fair and informative quotations, (2) prevent fictitious or misleading quotations, and (3) promote orderly procedures for collecting, distributing, and publishing quotations.[5] FINRA currently has in place extensive rules that govern the activity of member firms when they engage in quoting OTC Equity Securities. For example, the FINRA Rule 6400 Series (Quoting and Trading in OTC Equity Securities), among other things, provides a regulatory framework that governs the form and content of quotations; and FINRA maintains rules of general applicability that govern quoting and trading practices in the FINRA Rule 5200 Series (Quotation and Trading Obligations and Practices) (together, ''Quotation Governance Rules'').

FINRA's Quotation Governance Rules generally prescribe limitations around

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 6420(f) defines ''OTC Equity Security'' as any equity security that is not an ''NMS stock'' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term ''OTC Equity Security'' shall not include any Restricted Equity Security. (The term ''Restricted Equity Security'' is defined in Rule 6420(k) to mean any equity security that meets the definition of ''restricted security'' as contained in Securities Act Rule 144(a)(3).)

[4] *See* Rule 6420(c), which defines ''inter-dealer quotation system'' as ''any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.'' This definition tracks the SEC's definition of the same term in SEA Rule 15c2–11.

[5] 15 U.S.C. 78*o*–3(b)(11).

the conduct of members that publish quotations in OTC Equity Securities, including quotations displayed on inter-dealer quotation systems. For example, FINRA has a number of rules modeled off the principles found in SEC Regulation NMS that apply to member quotation activities on inter-dealer quotation systems in OTC Equity Securities. These rules consist of: (1) Rule 6434 (Minimum Pricing Increment for OTC Equity Securities), which sets forth the permissible pricing increments for the display of quotations and acceptance of orders; (2) Rule 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities), which requires firms to avoid locking and crossing quotations within an inter-dealer quotation system; (3) Rule 6450 (Restrictions on Access Fees), which establishes a cap on access fees imposed against a firm's published quotation; and (4) Rule 6460 (Display of Customer Limit Orders), which requires an OTC market maker, subject to certain exceptions, to display the full size of customer limit orders that improve the price of the marker maker's displayed quotation or that represent more than a *de minimis* change in the size of the market maker's quote if at the best bid or offer.[6] In addition, Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) generally provides that every member entering quotations in an inter-dealer quotation system must enter and honor those quotations for at least the minimum sizes defined in the rule.[7] Further, Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2–11) generally provides that members may not initiate or resume quotations in any ''quotation medium,'' [8] which includes an ''inter-dealer quotation system,'' unless the member files a Form 211 with FINRA and complies with SEA Rule 15c2–11 (Initiation or resumption of quotations without specified information).[9]

The Rule 5200 Series also includes rules that govern quotation activity, including activity in OTC Equity Securities. For example, Rule 5210 (Publication of Transactions and Quotations) provides, among other things, that members are prohibited from publishing or circulating (or causing to be published or circulated) any notice or communication of any kind which purports to quote the bid price or ask price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security (*i.e.,* the ''fictitious quotation'' prohibition). Rule 5210 applies to members that publish or circulate quotations, including on an ATS, and FINRA has published guidance to remind ATSs of their obligation to supervise activity that occurs on their platforms consistent with Rule 5210 and other FINRA rules.[10] In addition, Rule 5220 (Offers at Stated Prices) generally prohibits members from making an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell (*i.e.,* the ''firm quote'' requirement).

In addition to adopting and administering the Quotation Governance Rules, historically (since 1990), FINRA also expended substantial resources on operating the OTCBB, which is FINRA's inter-dealer quotation system available for use by broker-dealers to publish quotations in eligible OTC Equity Securities. The over-the-counter marketplace was very different when FINRA, then National Association of Securities Dealers, Inc. (NASD), first established the OTCBB. At that time, members largely relied on printed, rather than electronic, media for obtaining quotation information, and FINRA believed that the OTCBB would ''enhance the efficiency of pricing and foster competition within the inter-dealer market for a particular security.'' [11] However, given technological advancements since 1990 and the subsequent increase in alternative electronic venues with more extensive functionality than the OTCBB, the level of quotation activity occurring on the OTCBB has continued to decline over the past several years and is now nonexistent. In fact, as of the date of this filing, the OTCBB does not display or widely disseminate quotation information on any OTC Equity Securities.

Thus, while FINRA believes that the Quotation Governance Rules continue to provide important safeguards for investors and play an important role in furthering market integrity in the over-the-counter marketplace, FINRA does not believe that continued operation of the OTCBB serves any benefit to investors or the marketplace, and that the resources being expended on maintaining the OTCBB system would be better directed elsewhere. Therefore, FINRA is proposing to delete the rules governing the OTCBB and cease its operation, and at the same time enhance the regulatory obligations related to quotations in OTC Equity Securities by proposing new Rule 6439, which would govern the activities of member inter-dealer quotation systems, as further discussed below.[12]

A. Proposed Enhanced Requirements for Member Inter-Dealer Quotation Systems

As described above, FINRA's existing Quotation Governance Rules explicitly regulate the activities of OTC market makers [13] and other members that display quotations on inter-dealer quotation systems, but generally do not directly provide quotation governance

[6] *See* Securities Exchange Act Release No. 62359 (June 22, 2010), 75 FR 37488 (June 29, 2010) (Order Approving File No. SR–FINRA–2009–054) (approving the NMS-principled rules). These rules extended to the unlisted equity market certain protections previously applicable only to exchange-listed securities under the SEC's Regulation NMS and were adopted to enhance market quality and investor protection in the over-the-counter marketplace. *See also Regulatory Notice* 10–42 (September 2010).

[7] *See* Rule 6433.

[8] Rule 6420 defines ''quotation medium'' as ''any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any OTC Equity Security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.'' *See* Rule 6420(j).

[9] SEA Rule 15c2–11(a) generally provides that, ''[a]s a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium . . . unless such broker or dealer has in its records the documents and information required [under this rule], and, based upon a review of the [required] information . . . has a reasonable basis under the circumstances for believing that the [required] information is accurate in all material respects, and that the sources of the [required] information are reliable.'' 17 CFR 240.15c2–11(a).

[10] *See Regulatory Notice* 18–25 (August 2018) (reminding firms, among other things, that ''[a]s a general matter, consistent with existing supervision obligations, FINRA expects that an ATS's supervisory system be reasonably designed to identify 'red flags,' including potentially manipulative or non-bona fide trading that occurs on or through its systems'').

[11] *See* Securities Exchange Act Release No. 25949 (July 28, 1988), 53 FR 29096 (August 2, 1988) (Notice of Filing of File No. SR–NASD–88–19).

[12] As discussed further in Item II.C. below, FINRA previously proposed enhancing regulation of member inter-dealer quotation systems and deleting the rules governing the OTCBB and ceasing its operation, but ultimately withdrew that filing. *See* Securities Exchange Release No. 72575 (July 9, 2014), 79 FR 41339 (July 15, 2014) (Notice of Filing of File No. SR–FINRA–2014–030) (''2014 Filing'').

[13] FINRA Rule 6420(g) defines ''OTC Market Maker'' as a member of FINRA that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular OTC equity security in any inter-dealer quotation system, including any system that the SEC has qualified pursuant to Section 17B of the Act. A member is an OTC market maker only in those OTC equity securities in which it displays market making interest via an inter-dealer quotation system.

standards for a member inter-dealer quotation system on or through which such quotations are displayed. Given that all quotation activity in OTC Equity Securities occurs on member-operated inter-dealer quotation systems (rather than the, now essentially defunct, OTCBB), FINRA believes it is appropriate to adopt new rules directly tailored to such systems to ensure they have in place minimum standards. FINRA believes these proposed requirements complement the existing framework governing the form and content of quotations and are consistent with the goals and objectives of Section 17B of the Act [14] regarding the facilitation of widespread dissemination of reliable and accurate quotation information in penny stocks.[15]

Proposed new Rule 6439 would apply to members that operate an ''inter-dealer quotation system,'' as defined in Rule 6420 (Definitions), where such system permits quotation updates on a real-time basis. Specifically, the proposal would require that member inter-dealer quotation systems: (1) Establish and prominently disclose to subscribers (and disclose to prospective subscribers upon request) its written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities; (2) establish and prominently disclose to subscribers its non-discriminatory written standards for granting access to quoting and trading on its system (and disclose to prospective subscribers upon request); (3) establish written policies and procedures addressing subscriber unresponsiveness with respect to the display of firm quotations in OTC Equity Securities and the submission of reports to FINRA on a monthly basis that include specified order and response information; (4) make available to customers a written description of each OTC Equity Security order- or quotation-related data product offered by such member inter-dealer quotation system and related pricing information, including fees, rebates, discounts and cross-product pricing incentives; and (5) provide FINRA with specified information concerning the integrity of their systems.

i. Quotation Collection and Dissemination

Under paragraph (a) of proposed Rule 6439, a member inter-dealer quotation system would need to establish, maintain and enforce written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities on or through its system. The written policies and procedures would need to be reasonably designed to ensure that quotations received and disseminated are informative, reliable, accurate, firm, and treated in a not unfairly discriminatory manner, including by establishing non-discretionary standards under which quotations are prioritized and displayed. For example, a member inter-dealer quotation system would be required to address in its procedures its methodology for ranking quotations, including at a minimum, addressing factors such as price (including any applicable quote access fee), size, time, capacity and type of quotation (such as unpriced quotes and bid/offer wanted quotations). The member inter-dealer quotation system also would be required to include any other factors relevant to the ranking and display of quotations (*e.g.,* reserve sizes, quotation updates, treatment of closed quotations, and quotation information imported from other systems). The proposed rule would require member inter-dealer quotation systems to prominently disclose these written policies and procedures, along with any material updates, modifications and revisions, to subscribers within five business days following the date of establishment of the policy or procedure or implementation of the material change and to provide them to prospective subscribers upon request.[16] FINRA believes that requiring these policies and procedures would help ensure that member inter-dealer quotation systems have in place appropriate standards regarding the treatment of quotations received and would promote fair and orderly quotation activity in the unlisted equity market.[17] In addition, requiring that member inter-dealer quotation systems prominently disclose these procedures will provide subscribers and, upon request, prospective subscribers, with important information relating to the member inter-dealer quotation system's quotation collection and dissemination procedures.

ii. Fair Access

Paragraph (b) of proposed Rule 6439 would require member inter-dealer quotation systems to establish non-discriminatory written standards for granting access to quoting and trading in OTC Equity Securities on its system that do not unreasonably prohibit or limit any person in respect to access to services offered by such member inter-dealer quotation system.[18] This proposed requirement is consistent with the ''fair access'' requirements of SEC Regulation ATS but would apply to quoting and trading in all OTC Equity Securities on the member inter-dealer quotation system, regardless of the percentage of average daily volume that such member inter-dealer quotation system had in the security.[19] The proposed rule would further require that member inter-dealer quotation systems prominently disclose these written standards, and any material updates, modifications and revisions thereto, to its subscribers within five business days following the date of establishment of the written standards or implementation of the material change and to provide them to prospective subscribers upon request.[20] FINRA believes that this

[14] *See* 15 U.S.C. 78q–2. Section 17B was enacted by Congress as part of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (''Penny Stock Act''). Public Law 101–429, 104 Stat. 931 (1990). *See also* Securities Exchange Act Release No. 30608 (April 20, 1992), 57 FR 18004 (April 28, 1992) (''Penny Stock Release'') (adopting seven rules (the ''penny stock rules'') under the Exchange Act requiring broker-dealers engaging in certain transactions in low-priced OTC securities to provide customers with specified information).

[15] FINRA also separately intends to request that the Commission designate the FINRA OTC Reporting Facility (''ORF''), together with one or more member inter-dealer quotation system, as a Qualifying Electronic Quotation System (''QEQS'') for purposes of Exchange Act Rule 3a51–1(d)(1)(iii) and the penny stock rules adopted under Section 15(g) of the Exchange Act.

[16] A member that is an inter-dealer quotation system at the time of the effective date of this proposed rule change would prominently disclose the required information to its subscribers upon the effective date of the Rule and, thereafter, within five business days of the implementation of any material update, modification or revision thereto.

[17] FINRA would examine for compliance with proposed Rule 6439, including by reviewing the adequacy of member inter-dealer quotation systems' written policies and procedures and written fair access standards required under this proposal. Specifically, depending upon the timing of implementation, FINRA would conduct a targeted exam of impacted member inter-dealer quotation systems after the initial effectiveness of the rule and incorporate a Rule 6439 review as part of the regular exam program for impacted member firms.

[18] FINRA proposes that a member inter-dealer quotation system also must make and keep records of all grants of access including (for all subscribers) the reasons for granting such access and all denials or limitations of access and reasons (for each applicant) for denying or limiting access. A policy prohibiting or limiting access to services offered by the member inter-dealer quotation system due to non-payment by a subscriber would not be prohibited under the proposed rule.

[19] The fair access requirements in proposed Rule 6439 would apply to any member inter-dealer quotation system, regardless of its trading volume. Accordingly, while certain member inter-dealer quotation systems may already be subject to the volume-based fair access requirements in SEC Regulation ATS, Rule 6439 would ensure the application of such fair access requirements to all member inter-dealer quotation systems.

[20] A member that is an inter-dealer quotation system at the time of the effective date of this proposed rule change would prominently disclose the required information to its subscribers upon the effective date of the Rule and, thereafter, within five

proposed rule is appropriate given the significant role of member inter-dealer quotation systems in the over-the-counter market and will provide subscribers and prospective subscribers with additional information relating to the member inter-dealer quotation system's fair access standards.[21]

iii. Enhanced Firm Quote Compliance and Reporting

Paragraphs (c) and (d) of proposed Rule 6439 include provisions that seek to enhance the regulatory regime around firm quote rule compliance for those member inter-dealer quotation systems that do not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation. Specifically, paragraph (c) would require a member inter-dealer quotation system to establish, maintain and enforce written policies and procedures that are reasonably designed to address instances of unresponsiveness when orders are presented to trade with firm quotations displayed in OTC Equity Securities on its system. This provision, as is the case with proposed paragraph (d), discussed below, would apply only to a member inter-dealer quotation system that does not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation because there is no opportunity for unresponsiveness where orders are appropriately matched and auto-executed by the system.[22]

Currently, Rule 5220 and its associated Supplementary Material sets forth members' firm quote obligations by prohibiting members from making an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.[23] A member's failure to respond to an order for which it has a firm quote obligation can disrupt the normal operation of the over-the-counter market.[24]

Thus, FINRA is proposing to provide that a member inter-dealer quotation system that does not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation would be required to implement policies and procedures addressing unresponsiveness by its subscribers.[25] At a minimum, these policies and procedures must specify an efficient process for (i) monitoring subscriber unresponsiveness; (ii) subscribers to submit complaints to the member inter-dealer quotation system regarding potential instances of unresponsiveness to an order; (iii) documenting the subscriber's rationale for unresponsiveness; and (iv) determining specified steps when an instance of or repeated order unresponsiveness may have occurred. Given that order unresponsiveness can disrupt the normal operation of the over-the-counter market, FINRA believes that requiring policies and procedures to address this activity would increase market efficiency and integrity and thus benefit investors.

To support FINRA's oversight of the over-the-counter market, FINRA also proposes to require reporting of aggregate and order-level information by member inter-dealer quotation systems that do not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation. Specifically, proposed Rule 6439(d) would provide FINRA with additional information regarding the quotation activities occurring on member inter-dealer quotation system and would assist FINRA in surveilling for member compliance with firm quote obligations and unresponsiveness, which is an area in which FINRA regularly receives complaints.[26] Proposed Rule 6439(d) would require that, on a monthly basis (in the form and manner prescribed by FINRA),[27] each member inter-dealer quotation system subject to proposed paragraph (d) must provide to FINRA order and related response information for orders in OTC Equity Securities presented for execution against a displayed quotation for which a FINRA member subscriber has a Rule 5220 obligation.[28] Specifically, a member inter-dealer quotation system that does not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation would be required to provide the following aggregated information to FINRA, categorized by FINRA member subscriber market participant identifier (MPID) across all symbols quoted by the MPID during the previous calendar month: (i) Total number of marketable orders presented for execution against the MPID's quotation; [29] (ii) average execution (full or partial) time for marketable orders presented against the MPID's quotation based on the time an order is presented; (iii) total number of full or partial executions based on the time a marketable order is presented that are within specified execution timeframes; [30] (iv) total number of marketable orders presented against the MPID's quotation that did not receive a full or partial execution; and (v) average response time of the highest 10% and highest 50% of the MPID's response times for marketable orders (for full or partial executions).[31]

A member inter-dealer quotation system that is subject to proposed paragraph (d) also would be required to provide the following order-level information for each order presented against an MPID's quotation during the previous calendar month: Buy/sell; security symbol; price; size; All or None indicator (yes or no); order entry firm

business days of the implementation of any material update, modification or revision thereto.

[21] *See supra* note 17.

[22] Where a system permits manual responses to orders received against a displayed quotation, unresponsiveness can occur. Currently, FINRA is aware of only one member inter-dealer quotation system that does not match and auto-execute, and thus would be subject to proposed Rule 6439 (c) and (d).

[23] *See* Rule 5220.

[24] As stated in Rule 5220.01, ''if at the time an order for the purchase or sale of the quoted security is presented, the member is in the process of effecting a transaction in such quoted security and immediately after the completion of such transaction communicates a revised quotation size, such member shall not be obligated to purchase or sell the quoted security in an amount greater than such revised quotation size.''

[25] *See supra* note 17.

[26] For example, in 2018, FINRA received 119 complaints from members regarding instances of unresponsiveness to requests to execute against a displayed quotation. *See infra* note 42 and accompanying text.

[27] If the Commission approves the proposed rule change, FINRA would announce in a *Regulatory Notice* details about the required manner and timing of the submission of this information to FINRA.

[28] FINRA understands that communications on a member inter-dealer quotation system that would be subject to proposed Rule 6439(d) may be in the form of messages (*i.e.,* the back and forth communications between market makers) and are treated as ''negotiations'' by the system as they require trader intervention before a trade can occur. While such negotiation activities are considered ''orders'' for purposes of firm quote rule obligations and this proposed Rule, pursuant to current guidance, they are not considered ''orders'' for purposes of the Consolidated Audit Trail (CAT) at this time and no CAT reporting obligation exists until the terms and conditions of a trade have been agreed upon. *See* CAT FAQ J2.

[29] In this context, a ''marketable order'' refers to a message presented against a market maker's quote that is priced to be immediately executable.

[30] The proposed Rule would require that a member inter-dealer quotation system subject to proposed paragraph (d) report the total number of full or partial executions within the following execution timeframes: <5 seconds; ≥5 seconds and <10 seconds; ≥10 and <20 seconds; and ≥20 seconds.

[31] FINRA believes that some of this information already is generated by the member inter-dealer quotation system expected to be subject to this proposed provision. *See supra* note 22.

MPID; system-generated order number (if any); order receipt time; time in force; position in queue for quote (*e.g.,* IL1, IL2); response time; order response (*e.g.,* execute, reject cancel, etc.); and executed quantity. Notwithstanding these requirements, proposed Rule 6439(d)(2) generally would provide that, to the extent that the above order-level information is or becomes CAT reportable under Rule 6830 (Industry Member Data Reporting), a member inter-dealer quotation system would not have a reporting obligation under proposed Rule 6439(d)(1)(B). Whether obtained pursuant to this proposed rule or through CAT, the information required by proposed Rule 6439(d)(1)(B) would bolster FINRA's ability to surveil for compliance with Rule 5220. Thus, FINRA believes that this proposed rule change would further the integrity of the over-the counter market.

iv. Order and Quotation Data Product Transparency

Proposed Rule 6439(e) would require a member inter-dealer quotation system to provide on its website (or its affiliate distributor's website) a written description of each OTC Equity Security order- or quotation-related data product offered by such member inter-dealer quotation system and related pricing information, including fees, rebates, discounts and cross-product pricing incentives. Members would be required to keep the relevant website page(s) accurate and up-to-date with respect to the required information, and to make such information available at least two business days in advance of offering the data product. The provision would make clear that this requirement would not preclude members from negotiating lower fees with customers, provided that the member discloses on the relevant website page(s) the circumstances under which it may do so. FINRA believes that this aspect of the proposal would help keep customers, other investors and market participants informed about the availability of member-offered order- or quotation-related data products for OTC Equity Securities on an ongoing basis.

v. System Integrity

Finally, proposed Rule 6439(f) would require a member inter-dealer quotation system to provide FINRA with prompt notification when it reasonably becomes aware of any non-*de minimis* systems disruption that degrades, limits, or otherwise impacts the member inter-dealer quotation system's functionality with respect to trading or the dissemination of market data. Such notification would include, on a reasonable best efforts basis, a brief description of the event, its impact, and resolution efforts. Prompt receipt of this information would strengthen FINRA's oversight of the over-the-counter market by alerting FINRA to issues that could adversely affect the reliability, availability, or integrity of member inter-dealer quotation systems that support quoting and trading of OTC Equity Securities.

To comply with this requirement, a member inter-dealer quotation system that is an SCI alternative trading system, as defined in Rule 1000 of SEC Regulation SCI,[32] could provide FINRA with the same information (or a duplicate copy of any notification) submitted to the SEC concerning the occurrence of, and updates on, a non-*de minimis* systems disruption SCI event pursuant to Rule 1002(b) of SEC Regulation SCI,[33] promptly after filing the notification with the SEC. If a member inter-dealer quotation system is not an SCI alternative trading system, it could comply with this requirement by providing FINRA prompt notification when it reasonably becomes aware of any such systems disruption, and by providing periodic updates on the event and its resolution. As noted above, such notifications would include, on a reasonable best efforts basis, a brief description of the event, its impact, and resolution efforts. While this requirement is informed by the event reporting requirements established in Regulation SCI, it not intended to impose the formal reporting framework provided by SEC Regulation SCI, or otherwise extend or apply Regulation SCI, to a member inter-dealer quotation system not subject to it. FINRA would announce in a *Regulatory Notice* the methods and process by which members may provide systems disruption notifications to FINRA.

B. Proposed Deletion of OTCBB-Related Rules

As discussed above, FINRA also is proposing to delete the FINRA Rule 6500 Series, which governs the operation of the OTCBB and cease its operation. Use of the OTCBB has declined precipitously over the years, such that the system now is essentially defunct. In fact, the OTCBB does not widely disseminate quotation information on any OTC Equity Securities. As a result, discontinuance of the OTCBB as an inter-dealer quotation system will not impact the current level of quotation information available for OTC Equity Securities, and FINRA strongly believes that there is no benefit to investors or the marketplace by continuing operation of the OTCBB. Further, FINRA notes that, where investors look to feeds that solely disseminate OTCBB data for quotation information on a particular OTC Equity Security, investors mistakenly may conclude that there are no current quotations in the security (when, in fact, there may be numerous quotations available elsewhere—*i.e.,* on member-operated inter-dealer quotation systems). Therefore, FINRA believes that ceasing operation of the OTCBB would eliminate potential investor confusion regarding the availability of quotation information for OTC Equity Securities. For the same reasons, FINRA does not believe that the OTCBB, in its current state, furthers the goals and objectives of Section 17B of the Act[34] and, therefore, does not meet the characteristics of a system described in Section 17B of the Act regarding the widespread dissemination of reliable and accurate quotation information with respect to ''penny stocks.''[35] However, since the inception of the OTCBB, non-self-regulatory organization (''SRO'') entities that are member inter-dealer quotation systems have increased their participation in the collection and dissemination of quotation information in OTC equity securities, including for those OTC equity securities meeting the definition of ''penny stock,'' and have made such quotation information available to investors and market participants. Thus, FINRA believes that discontinuance of the OTCBB as an inter-dealer quotation system will not have an appreciable impact on the current level of quotation transparency for OTC equity securities. Importantly, FINRA will continue to centralize last sale transaction reporting through the ORF and, therefore, will continue to operate a system that collects and disseminates transaction information on, and provides widespread dissemination of reliable and accurate last sale information with respect to, OTC equity securities, including penny

[32] *See* 17 CFR 242.1000.

[33] *See* 17 CFR 242.1002(b).

[34] Section 17B of the Act provides, among other things, that the Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks.

[35] Under SEA Rule 3a51–1, ''penny stock'' is defined to, among other things, exclude securities that have a price of five dollars or more as determined either on a per transaction basis or, in the absence of a transaction, on the basis of the inside bid quotation for the security displayed on an automated quotation system that has the characteristics set forth in Section 17B(b)(2) of the Act or any other system that is designated by the Commission. *See* 17 CFR 240.3a51–1.

stocks.[36] Thus, the objectives of Section 17B of the Act relating to the provision of price and volume information to investors and market participants will continue to be satisfied through FINRA's operation of the ORF.

In advance of the discontinuance of the OTCBB, FINRA will take steps to ensure a smooth transition for issuers and members. Specifically, although there are no members currently using the OTCBB, FINRA will publicize announcements through the FINRA.org website.[37] Thereafter, FINRA will continue to assess the widespread availability of quotation transparency to investors and market participants through non-SRO sources on a regular basis. If the availability of quotation information to investors significantly declines, FINRA will revisit and, if necessary, file a proposed rule change to establish an SRO-operated inter-dealer quotation system (or other measure) to facilitate the type of widespread quotation transparency described in Section 17B of the Act.

FINRA also is proposing to delete the text of Rule 7720 (OTC Bulletin Board Service), which currently sets forth the fees applicable to a broker-dealer that displays quotations or trading interest in the OTCBB. This rule no longer would be relevant if FINRA ceased the operation of the OTCBB in connection with this proposal. In addition, FINRA is proposing to amend Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) to remove reference to Rule 6550 (Transaction Reporting), which FINRA is proposing to delete as part of this proposal.

If the Commission approves the proposed rule change, FINRA will announce the effective date(s) of the proposed rule change in a *Regulatory Notice.* The effective date(s) may be phased, but will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[38] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act,[39] which requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied, and that such rules be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

Specifically, proposed Rule 6439 would implement new requirements for member inter-dealer quotation systems by, among other things, requiring such members to establish procedures that govern the treatment of, and fair access to, quotations in OTC Equity Securities. Proposed Rule 6439 also would require members to address instances of unresponsiveness to orders when subscribers are posting firm quotations in OTC Equity Securities. These provisions are designed to promote just and equitable principles of trade, protect investors and the public interest, and enhance regulatory oversight of the form and content of quotations for OTC Equity Securities, consistent with Sections 15A(b)(6) and (11). Given the significant role that member-operated inter-dealer quotation systems serve today in the marketplace for OTC Equity Securities, FINRA believes the proposed requirements would improve the reliability, integrity, fairness of, and access to quotations for OTC Equity Securities. FINRA also believes these proposed requirements are consistent with the Act because they would improve FINRA's oversight of member inter-dealer quotation systems.

Further, FINRA believes that the proposed rule change is consistent with Section 17B of the Act.[40] Section 17B was enacted by Congress as part of the Penny Stock Act, which was designed to remedy inefficiencies and address regulatory concerns caused by the lack of reliable market information on penny stocks traded over the counter and, in connection with this initiative, the Commission designated the OTCBB as a QEQS for purposes of the penny stock rules.[41]

Due to the decline of OTCBB, as discussed above, FINRA is concerned that OTCBB is no longer a reliable source of complete quotation information for OTC equity securities and, therefore, operation of the system no longer furthers the purposes of Section 17B of the Act. FINRA believes that the proposed rule change would protect investors and the public interest by deleting the OTCBB rules and discontinuing its operation, because the OTCBB does not widely disseminate best bid or offer information for any securities. FINRA believes that ceasing operation of the OTCBB would remove potential investor confusion regarding the availability of quotation information for OTC Equity Securities and would allow FINRA to better allocate regulatory resources. FINRA believes that ceasing operation of the OTCBB, coupled with the proposed changes to improve the governance of member inter-dealer quotation systems on or through which quotations in OTC equity securities are displayed, best serves and promotes the goals of Section 17B of the Act with respect to the widespread availability of quotation information in penny stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Need

As discussed above, FINRA is proposing to delete the OTCBB rules and discontinue its operation and adopting new requirements for member inter-dealer quotation systems to enhance the regulation of quotation activity in OTC Equity Securities. The proposed amendments are intended to achieve a more robust regulatory framework around member inter-dealer quotation systems.

Economic Baseline

As mentioned above, the level of quotation activity occurring on the OTCBB has significantly declined over the past several years and is now nonexistent. Of the 352,698 average trades per day reported in all OTC

[36] FINRA members generally are required to report trades in OTC equity securities to ORF within 10 seconds of execution and FINRA widely disseminates this transaction information in real-time.

[37] FINRA notes that there currently are no OTCBB symbols.

[38] 15 U.S.C. 78*o*–3(b)(6).

[39] *See* 15 U.S.C. 78*o*–3(b)(11).

[40] *See* 15 U.S.C. 78q–2.

[41] *See* Penny Stock Release, *supra* note 14.

Equity Securities in August 2020 (with a total of 7,406,664 trades reported in all OTC Equity Securities for the month), none were related to quotation activity on the OTCBB. No member firms have quoted on the OTCBB since October 29, 2019. Because all quotation activity in OTC Equity Securities now occurs on member inter-dealer quotation systems, FINRA's increased oversight of these systems would be beneficial from market integrity and investor protection perspectives.

As of August 2020, FINRA is aware of two member inter-dealer quotation systems: Global OTC and OTC Link. An average of 4,227,157 and 13,370,896 quotations were posted on Global OTC and OTC Link, respectively, per day in August 2020, leading to an average of 24,408 and 9,567 trades on Global OTC and OTC Link, respectively, per day. In that same month, an average of 5,968 and 11,586 symbols were quoted on Global OTC and OTC Link, respectively, per day.

FINRA previously proposed amendments substantially similar to proposed Rule 6439(a) and (b), which would require that member inter-dealer quotation systems adopt and prominently disclose written policies and procedures around the collection and dissemination of quotation information in OTC Equity Securities and establish and prominently disclose non-discriminatory written standards for granting access to quoting and trading on member inter-dealer quotation systems, respectively. As discussed in Item 5 below, when previously proposed, these aspects of the proposal did not appear to be controversial because they were not opposed by commenters. FINRA understands that member inter-dealer quotation systems already have established and adopted policies and procedures regarding quote collection and dissemination. FINRA also notes that member inter-dealer systems that are alternative trading systems already may be subject to similar fair access standards pursuant to Regulation ATS (when they reach certain volume thresholds), which potentially could simplify compliance with regard to the fair access requirements under the instant proposal.

With respect to proposed Rule 6439(c) and (d) regarding firm quote compliance and reporting, FINRA would use the collected information in connection with its program regarding compliance with Rule 5220. Currently, aggrieved members may contact FINRA to report instances of unresponsiveness.[42] In addition, FINRA understands that, while some of the order and response information required by the proposal may not be maintained in the required form by the impacted member inter-dealer quotation system at present, other aspects of the proposed required information already is collected and provided to subscribers. With respect to proposed Rule 6439(e) regarding data product and pricing transparency, FINRA understands that member inter-dealer quotation systems or affiliate distributors currently provide information regarding their data products and the associated fees on their websites. In addition, with respect to proposed Rule 6439(f) regarding system integrity, if a member inter-dealer quotation system already is subject to SEC Regulation SCI, it already is required to report to the SEC the same type of information that would be required to be reported to FINRA under the proposal. For a member inter-dealer quotation system not already required to report this information to the SEC, the proposed rule would apply a new notification requirement.

Economic Impact

Costs

Due to the non-existent quoting activity on the OTCBB, FINRA does not believe that discontinued operation of the system would impose a material cost on members, as member firms were never required to maintain connectivity to the OTCBB. In addition, due to the more extensive functionalities on member inter-dealer quotation systems, FINRA believes that member inter-dealer quotation systems can serve as substitutes for the OTCBB. Furthermore, FINRA will continue to centralize last sale transaction reporting through the ORF, and, consequently, will continue to collect and disseminate transaction information on last sale information of OTC Equity Securities, including penny stocks. FINRA does not expect that members would change their behavior in terms of where they seek liquidity as a result of the proposed amendments and notes that dealers already use these other platforms for virtually all quoting in OTC Equity Securities.

Member inter-dealer quotation systems could potentially incur costs associated with establishing, adopting, and prominently disclosing procedures and standards pursuant to the requirements in proposed Rules 6439 (a) and (b), to the extent that existing procedures and standards are not sufficient to comply with the requirements of the proposed rule or are not prominently disclosed. Member inter-dealer quotation systems also could potentially incur costs associated with the proposals related to firm quote compliance and reporting and system integrity. The potential impact of these provisions could be different for each member inter-dealer quotation system. For example, the proposals relating to firm quote compliance and reporting only apply to member inter-dealer quotation systems that do not automatically execute all orders presented against a displayed quotation on their system (because there is no opportunity for unresponsiveness where orders appropriately are matched and automatically executed by the system). However, where a member inter-dealer quotation system permits manual responses to orders received against a displayed quotation, unresponsiveness can occur, and the system would incur the costs associated with complying with the proposed enhancements. In the current regime, FINRA is aware of only one member inter-dealer quotation system that does not automatically execute all orders on its system, and thus would have to comply with proposed Rules 6439(c) and (d).

With respect to proposed Rule 6439(e) regarding data product and pricing transparency, FINRA understands that member inter-dealer quotation systems or affiliate distributors currently provide information regarding their data products and the associated fees on their websites. Member inter-dealer quotation systems could potentially incur costs associated with complying with the requirements in proposed Rules 6439(e) to the extent that existing disclosures are not sufficient to comply with the requirements of the proposed rule.

In addition, the potential impact of the proposed system disruption reporting requirement in proposed Rule 6439(f) would vary based on whether a member inter-dealer quotation system is subject to SEC Regulation SCI. For a member inter-dealer quotation system that is subject to SEC Regulation SCI, FINRA expects that the proposed requirements would impose no material additional costs. For a member inter-dealer quotation system that is not subject to SEC Regulation SCI, the proposed requirements could impose limited additional costs, as the member inter-dealer quotation system would be required to develop a new process for promptly reporting systems disruptions

[42] In 2018 and 2019, FINRA received 119 and 53 complaints, respectively, regarding unresponsiveness to attempts to execute against displayed a quote, and in 2020, FINRA has received 37 such complaints as of September 15, 2020.

to FINRA. However, FINRA intends this to be a streamlined reporting requirement that applies once the member inter-dealer quotation system reasonably becomes aware of an event; this proposal is not intended to impose the formal reporting framework provided by SEC Regulation SCI, or otherwise extend or apply Regulation SCI, to a member inter-dealer quotation system not subject to it. To the extent that such costs are passed on to the member inter-dealer quotation system's subscribers, firms potentially could observe an increase in costs associated with quoting and trading on these platforms. Such increase in costs may be reflected in fees imposed on the subscribers.

Benefits

Although no member firms have posted quotes on the OTCBB since October 29, 2019, some firms may still be connected to the OTCBB. To the extent that member firms incur costs associated with OTCBB connectivity, firms may gain cost savings from no longer maintaining a connection.

Given the importance of compliance with the firm quote rule, FINRA would anticipate benefits to market integrity through improved oversight of firm quote rule compliance from requiring a member inter-dealer quotation system that does not automatically execute all orders presented for execution against quotations displayed on its platform to establish policies and procedures to address instances of subscriber unresponsiveness and report order and response message information to FINRA on a monthly basis.

FINRA expects that the proposed amendments would enhance investor protection in the OTC equity space through increased oversight of member inter-dealer quotation systems. Because member inter-dealer quotation systems facilitate virtually all of the quoting activity in this market, the proposed amendments, and how they apply to member inter-dealer quotation systems with different functionalities, would potentially provide protection for clients of all types of member inter-dealer quotation systems. With respect to the proposed system integrity requirements, as noted above, FINRA believes these requirements would enhance FINRA's oversight of the systems a member inter-dealer quotation system uses, thereby promoting the reliability and availability of such systems.

Alternatives Considered

No other alternatives were considered for the proposed amendments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA previously proposed amendments substantially similar to certain aspects of the instant filing.[43] However, the previous rule filing was withdrawn as FINRA continued to consider what changes to the governance of the over-the-counter marketplace were appropriate. Below is a discussion of the comments FINRA previously received on the substantially similar items being re-proposed in the instant filing.

As it is proposing in the instant filing, FINRA previously proposed ceasing operation of the OTCBB and deleting the Rule 6500 Series and related rules. Commenters supported this aspect of the proposal.[44] For example, OTC Markets stated that ''FINRA's OTCBB no longer provides broker-dealers with an effective service for pricing securities, and market participants will be better served by FINRA regulating Qualifying IQSs instead of expending resources trying to operate the OTCBB.'' Global OTC stated that it agreed ''that OTCBB volume and relevance has dissipated over the last few years'' and therefore did not object to closure of the OTCBB and related deletion of the Rule 6500 Series.

FINRA also previously proposed rules substantively similar to proposed Rules 6439(a) (relating to the collection and dissemination of quotation information) and (b) (relating to fair access standards). Commenters generally supported the proposal relating to the collection and dissemination of quotation information, and no commenters opposed this aspect of the proposal. For example, OTC Markets stated that this aspect of the proposal, among others, ''has as its focus the improved fairness of the dissemination or availability of quotation information'' and would ''provide additional transparency to the market and ensure fair access to quotation related services and data.'' Commenters also supported the proposal relating to fair access standards. For example, OTC Markets stated that it already had policies in place that it believed would satisfy the requirements of the proposed rule change because it was subject to the fair access provisions under SEC Regulation ATS. This commenter also noted that, because the proposal's fair access requirements mirror those in SEC Regulation ATS, the requirements are appropriately tailored to ensure non-discriminatory availability of access to the system without unnecessarily burdening the ATS.

Finally, FINRA previously proposed a rule that required member inter-dealer quotation systems to provide FINRA with a written description of each quotation-related data product that it offers, and all related pricing information.[45] Commenters supported this aspect of the proposal, and no commenters opposed this aspect of the proposal. For example, OTC Markets stated that this proposal would ''ensure a baseline of reliable, accurate information available to all investors'' and Global OTC noted that the information would provide more transparency to market participants, and pointed out that ''similar requirements already exist in the exchange space.''

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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–FINRA–2020–031 on the subject line.

[43] *See* 2014 Filing, *supra* note 12.

[44] *See* Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Secretary, SEC, dated August 5, 2014 (''OTC Markets''); Letter from Barry Scadden, Vice President, Global OTC, to Kevin M. O'Neill, Deputy Secretary, SEC, dated October 10, 2014 (''Global OTC''); Letter from Michael R. Trocchio, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC, dated November 4, 2014 (''Sidley Austin on behalf of OTC Markets'').

[45] The instant proposal instead would require member inter-dealer quotation systems to post this information on their website page(s), rather than providing it to FINRA.

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–FINRA–2020–031. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2020–031 and should be submitted on or before October 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

J. Matthew DeLesDernier,

Assistant Secretary.

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[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90068; File No. 4–631]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan To Address Extraordinary Market Volatility To Add MIAX PEARL LLC as a Participant

October 1, 2020.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on September 8, 2020, MIAX PEARL LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan to Address Extraordinary Market Volatility (''LULD Plan'' or ''Plan'') as a Participant.[3] The amendment adds MIAX PEARL as a Participant[4] to the LULD Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Amendment

On August 14, 2020, the Commission issued an order approving MIAX PEARL's proposal to adopt rules governing the trading of equity securities.[5] As noted above, the proposed amendment adds MIAX PEARL as a Participant to the LULD Plan.

Under Section II(C) of the LULD Plan, any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan. Section III(B) of the LULD Plan sets forth the process for a prospective new Participant to effect an amendment of the Plan. Specifically, the LULD Plan provides that such an amendment to the Plan may be effected by the new national securities exchange or national securities association by executing a copy of the Plan as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan); and submitting such executed Plan to the Commission. The amendment will be effective when it is approved by the Commission in accordance with Rule 608 of Regulation NMS, or otherwise becomes effective pursuant to Rule 608 of Regulation NMS.

MIAX PEARL has become a participant in the applicable Market Data Plans,[6] executed a copy of the Plan currently in effect, with the only change being the addition of its name in Section II(A) of the Plan, and has provided a copy of the Plan executed by MIAX PEARL to each of the other Participants. MIAX PEARL has also submitted the executed Plan to the Commission. Accordingly, all of the Plan requirements for effecting an amendment to the Plan to add MIAX PEARL as a Participant have been satisfied.

II. Effectiveness of the Proposed Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)[7] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] *See* Letter from Christopher Solgan, Vice President and Senior Counsel, dated September 8, 2020 to Vanessa Countryman, Secretary, Commission. On May 6, 2012, the Commission issued an order approving the Plan on a pilot basis (the ''Approval Order''). *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The Commission approved the LULD Plan on a permanent basis on April 11, 2019. *See* Securities Exchange Act Release No. 85623, 84 FR 16086 (April 17, 2019).

[4] Defined in Section I(K) of the Plan as follows: ''Participant'' means a Party to the Plan.

[5] *See* Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020).

[6] *See* Letter from Robert Books, Chairman, Operating Committee, CTA/CQ Plans, to Vanessa Countryman, Secretary, Commission, dated September 3, 2020 to Vanessa Countryman, Secretary, SEC (relating to Thirty-Fourth Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Fifth Substantive Amendment to the Restated CQ Plan adding MIAX PEARL as a participant) and letter from Robert Books, Chairman, Operating Committee, UTP Plan, to Vanessa Countryman, Secretary, Commission, dated September 3, 2020 (relating to Forty-Eighth Amendment to the UTP Plan adding MIAX PEARL as a participant).

[7] 17 CFR 242.608(b)(3)(iii).

[8] 17 CFR 242.608(a)(1).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the 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 4–631 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–631. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090 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 4–631 and should be submitted on or before October 28, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22117 Filed 10–6–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90066; File No. SR–MSRB–2020–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Amendments to the By-Laws of the Municipal Securities Rulemaking Board To Reflect Recent Changes To MSRB Rules A–3, A–4, and A–6

October 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2020 the Municipal Securities Rulemaking Board (''MSRB'') 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 MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of amendments to the By-Laws of the MSRB (''Bylaws'') to reflect recent changes to MSRB Rules A–3, A–4, and A–6 (the ''proposed rule change''). The MSRB has designated the proposed rule change as ''concerned solely with the administration of the self regulatory organization'' under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3)[4] thereunder, which renders the proposal effective upon filing with the Commission.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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

MSRB Rules A–2 through A–10 are reproduced in the Bylaws as Articles 2 through 10. Accordingly, when amendments are made to MSRB Rules A–2 through A–10, the Bylaws must be updated to reflect the changes. On August 5, the Commission approved amendments to MSRB Rules A–3 and A–6, effective October 1, 2020.[5] On September 15, the Board filed additional amendments to MSRB Rule A–3 and amendments to MSRB Rule A–4 that were immediately effective and will become operative on October 1, 2020.[6] As a result of these amendments, changes to Articles 3, 4 and 6 of the Bylaws are necessary so that the Bylaws reflect the corresponding rules as they will read on October 1, 2020. Additionally, a cross-reference in Article 16 of the Bylaws to MSRB Rule A–4(c) must also be updated because the relevant provision of MSRB Rule A–4(c) has been moved into a new subsection, A–4(e).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(I) of the Exchange Act,[7] which provides that the MSRB's rules shall:

> provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this section.

The proposed rule change is consistent with Section 15B(b)(2)(I) of the Exchange Act[8] because it provides for the operation and administration of the Board in that it ensures that the Bylaws reflect, and are consistent with,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] See Exchange Act Release No. 89484 (Aug. 5, 2020), 85 FR 48579 (Aug. 11, 2020) (File No. SR–MSRB–2020–04).

[6] File No. SR–MSRB–2020–05, available at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings.aspx.*

[7] 15 U.S.C. 78*o*–4(b)(2)(I).

[8] *Id.*

the recent changes to the Board's administrative rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[9] The proposed rule change relates only to the administration of the Board and would not impose requirements on brokers, dealers, municipal securities dealers, municipal advisors or others. Accordingly, the MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and paragraph (f) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 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–MSRB–2020–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2020–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use 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 MSRB. 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–MSRB–2020–07 and should be submitted on or before October 28, 2020.

For the Commission, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22098 Filed 10–6–20; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78*o*–4(b)(2)(C).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90070; File No. 4–518]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan Establishing Procedures Under Rule 605 of Regulation NMS To Add MIAX PEARL, LLC as a Participant

October 1, 2020.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on September 8, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'')[3] an amendment to the national market system plan establishing procedures under Rule 605 of Regulation NMS (''Plan'').[4] The amendment adds MIAX PEARL as a Participant[5] to the Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Plan Amendment

As noted above, the sole proposed amendment to the Plan is to add the Exchange as a Participant. On December 13, 2016, the Commission issued an order granting the Exchange's application for registration as a national securities exchange.[6] On August 14, 2020, the Commission approved the Exchange's proposal to adopt rules governing the trading of equity securities.[7] Under the Equities Approval Order, one of the conditions to MIAX PEARL's trading of equity securities is that it must join the Plan.

Under Section II(c) of the Plan, any entity registered as a national securities exchange or national securities association under the Act may become a Participant by: (i) Executing a copy of

[1] 15 U.S.C 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] *See* Letter from Christopher Solgan, VP, Senior Counsel, MIAX PEARL, to Vanessa Countryman, Secretary, Commission, dated September 8, 2020.

[4] 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1–5 under the Act (n/k/a Rule 605 of Regulation NMS). *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

[5] The term ''Participant'' is defined as a party to the Plan.

[6] *See* Securities Exchange Act Release No. 79543, 81 FR 92901 (December 20, 2016) (File No. 10–227).

[7] *See* Securities Exchange Act Release No. 89563, 85 FR 51510 (August 20, 2020) (''Equities Approval Order'').

the Plan, as then in effect; (ii) providing each then-current Participant with a copy of such executed Plan; and (iii) effecting an amendment to the Plan as specified in Section III(b) of the Plan. Section III(b) of the Plan sets forth the process for a prospective new Participant to effect an amendment of the Plan. Specifically, the Plan provides that such an amendment to the Plan may be effected by the new national securities exchange or national securities association by executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(a) of the Plan and the new Participant's single-digit code in Section VI(a)(1) of the Plan) and submitting such executed Plan to the Commission. The amendment will be effective when it is approved by the Commission in accordance with Rule 608 of Regulation NMS, or otherwise becomes effective pursuant to Rule 608 of Regulation NMS.

MIAX PEARL has executed a copy of the Plan currently in effect, with the only changes being the addition of its name in Section II(a) of the Plan and adding its single-digit code in Section VI(a)(1) of the Plan, and has provided a copy of the Plan executed by MIAX PEARL to each of the other Participants. MIAX PEARL has also submitted the executed Plan to the Commission. Accordingly, all of the Plan requirements for effecting an amendment to the Plan to add MIAX PEARL as a Participant have been satisfied.

II. Effectiveness of the Proposed Plan Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) of the Act[8] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[9] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the 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 4–518 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–518. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–518 and should be submitted on or before October 28, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22118 Filed 10–6–20; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 242.608(b)(3)(iii).

[9] 17 CFR 242.608(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34041, File No. 812–15141]

Invesco Capital Management LLC, et al.

October 1, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

APPLICANTS: Invesco Capital Management LLC (the ''Initial Adviser''), Invesco Distributors, Inc. (the ''Distributor''), Invesco Actively Managed Exchange-Traded Fund Trust, and Invesco Actively Managed Exchange-Traded Commodity Fund Trust (the ''Trusts,'' and each, a ''Trust'').

SUMMARY OF APPLICATION: Applicants request an order (''Order'') that permits: (a) The Funds (defined below) to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

FILING DATE: The application was filed on July 8, 2020 and amended on

[1] Fidelity Beach Street Trust, et al., Investment Company Act Rel. Nos. 33683 (Nov. 14, 2019) (notice) and 33712 (Dec. 10, 2019) (order). Applicants are not seeking relief under Section 12(d)(1)(J) of the Act for an exemption from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (the ''Section 12(d)(1) Relief''), and relief under Sections 6(c) and 17(b) of the Act for an exemption from Sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, as granted in the Reference Order. Accordingly, to the extent the terms and conditions of the Reference Order relate to such relief, they are not incorporated by reference into the Order.

September 9, 2020 and September 30, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on October 26, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, *Secretarys-Office@sec.gov.* Applicants: Adam Henkel, Esq., Invesco Capital Management LLC, *Adam.Henkel@invesco.com.*

FOR FURTHER INFORMATION CONTACT: Kay M. Vobis, Senior Counsel, at (202) 551–6728 or Trace W. Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants:

1. Each Trust is a statutory trust organized under the laws of Delaware and will consist of one or more series operating as a Fund. Each Trust is registered as an open-end management investment company under the Act. Applicants seek relief with respect to Funds (as defined below), including an initial Fund (the ''Initial Fund''). The Funds will offer exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order.[2]

2. The Initial Adviser, a Delaware limited liability company, will be the investment adviser to the Initial Fund. Subject to approval by the Trusts' board of trustees, an Adviser (as defined below) will serve as investment adviser to each Fund. The Initial Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). An Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers with respect to the Funds (each a ''Sub-Adviser''). Any Sub-Adviser to a Fund will be registered under the Advisers Act.

3. The Distributor is a Delaware corporation and a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief:

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act. The requested Order would permit applicants to offer Funds that operate as contemplated by the Reference Order. Because the relief requested is the same as certain of the relief granted by the Commission under the Reference Order and because the Initial Adviser has entered into a licensing agreement with Fidelity Management & Research Company, or an affiliate thereof, in order to offer Funds that operate as contemplated by the Reference Order,[3] the Order would incorporate by reference the terms and conditions of the same relief of the Reference Order.

5. Applicants request that the Order apply to the Initial Fund and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with the Initial Adviser (any such entity included in the term ''Adviser''); (b) offers exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order; and (c) complies with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order (each such company or series and the Initial Fund, a ''Fund'').[4]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c) and 17(b) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22183 Filed 10–6–20; 8:45 am]

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[2] To facilitate arbitrage, among other things, each day a Fund will publish a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance.

[3] Certain aspects of how the Funds will operate (as described in the Reference Order) are the intellectual property of Fidelity Management & Research Company (or its affiliates).

[4] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order.

DEPARTMENT OF STATE

[Public Notice 11223]

30-Day Notice of Proposed Information Collection: J–1 Visa Waiver Recommendation Application

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State is seeking Office of Management and Budget (''OMB'') approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection

from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment.

DATES: Submit comments up to November 6, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice may be submitted to Megan Herndon, who may be reached over telephone at (202) 485–7586 or email at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* J–1 Visa Waiver Recommendation Application.
- *OMB Control Number:* 1405–0135.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO).
- *Form Number:* DS–3035.
- *Respondents:* J–1 visa holders applying for a waiver of the two-year foreign residence requirement.
- *Estimated Number of Respondents:* 8,145.
- *Estimated Number of Responses:* 8,145.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 8,145 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Department of State uses Form DS–3035 to assess the eligibility of a J–1 visa holder for a waiver of the two-year foreign residence requirement, and to issue a recommendation of whether the Department of Homeland Security should grant a waiver of that requirement.

Methodology

Applicants will complete the DS–3035 online. An applicant's information will be downloaded into a barcode, and then a waiver case number and further instructions will be immediately issued. Next, applicants must print their online form with the barcode. Please note that the barcode must be printed in black and white only. After the DS–3035 is completed and printed out, applicants must mail their waiver application and fee payment to: Department of State J–1 Waiver, P.O. Box 979037, St. Louis, MO 63197–9000.

Edward J. Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2020–22145 Filed 10–6–20; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 552 (Sub-No. 24)]

Railroad Revenue Adequacy—2019 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On October 1, 2020, the Board served a decision announcing the 2019 revenue adequacy determinations for the Nation's Class I railroads. Five Class I railroads (BNSF Railroad Company, CSX Transportation, Inc., Norfolk Southern Combined Railroad Subsidiaries, Soo Line Corporation, and Union Pacific Railroad Company) were found to be revenue adequate.

DATES: This decision is effective on October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10704(a)(3), the Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment (ROI) equal to at least the current cost of capital for the railroad industry. For 2019, this number was determined to be 9.34% in *Railroad Cost of Capital—2019,* EP 558 (Sub-No. 23) (STB served Aug. 5, 2020).[1] The Board then applied this revenue adequacy standard to each Class I railroad. Five Class I carriers (BNSF Railroad Company, CSX Transportation, Inc., Norfolk Southern Combined Railroad Subsidiaries, Soo Line Corporation, and Union Pacific Railroad Company) were found to be revenue adequate for 2019.

The decision in this proceeding is posted at *www.stb.gov.*

Decided: October 1, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2020–22100 Filed 10–6–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36442]

Oregon Independence Railroad, LLC—Operation Exemption—in Polk County, Or.

Oregon Independence Railroad, LLC (OIRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to restore common carrier operations over approximately 0.4267 miles of private rail trackage, extending from milepost 0.1833, at a point of connection with Portland & Western Railroad, Inc., to milepost 0.61 (the center-line of the Polk Street grade crossing), in Independence, Polk County, Or. (the Line).

OIRR states that the Line was abandoned by the Willamette Valley Railroad Company [1] but the track was left in place. OIRR states that, since its abandonment, the Line has been used as private track and has undergone various ownership changes, with Valley & Siletz Railroad, LLC (VSRL), a noncarrier,

[1] On August 24, 2020, the Western Coal Traffic League (WCTL) filed a petition seeking reconsideration of the Board's 2019 railroad industry cost of capital in Docket No. EP 558 (Sub-No. 23). That petition is currently under consideration with the Board. Should WCTL's petition be granted, the Board will take appropriate action in this proceeding with regard to its 2019 revenue adequacy determination.

[1] *See Willamette Valley R.R.—Aban. Exemption—in Polk Cnty., Or.,* AB 403X (STB served Apr. 5, 1996) (authorizing entire system abandonment of 1.8 miles of rail line).

being the Line's most recent owner. OIRR states that it acquired control of VSRL as of September 11, 2020, and VSRL transferred its assets, including the Line, to OIRR on September 18, 2020. OIRR further states that on the effective date of the exemption, it intends to commence common carrier operations over the Line.

OIRR certifies that its projected annual revenues as a result of this transaction will not exceed $5 million or the threshold required to qualify as a Class III carrier. OIRR also certifies that the transaction is not subject to any limitation on OIRR's ability to interchange traffic with a third-party connecting carrier.

The transaction may be consummated on or after October 21, 2020, the effective date of the exemption (30 days after the verified notice was filed).

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 October 14, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36442, 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 OIRR's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to OIRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: October 1, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–22201 Filed 10–6–20; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on November 5, 2020. Due to the COVID–19 situation and the relevant orders in place in the Commission's member jurisdictions, the Commission will hold this hearing telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for December 11, 2020, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The deadline for the submission of written comments is November 18, 2020.

DATES: The public hearing will convene on November 5, 2020, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is November 18, 2020.

ADDRESSES: This hearing will be held by telephone rather than at a physical location. Conference Call #1–888–387–8686, the Conference Room Code #9179686050.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423; fax: (717) 238–2436.

Information concerning the applications for these projects is available at the Commission's Water Application and Approval Viewer at *https://www.srbc.net/waav.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects.

Projects Scheduled for Action

1. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Susquehanna Depot Borough, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20161202).

2. Project Sponsor and Facility: Chesapeake Appalachia, L.L.C. (Towanda Creek), Monroe Borough and Monroe Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).

3. Project Sponsor and Facility: Denver Borough, Borough of Denver, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.120 mgd (30-day average) from Well 4 (Docket No. 19960102).

4. Project Sponsor and Facility: Elmira Water Board, City of Elmira, Chemung County, N.Y. Application for renewal of groundwater withdrawals (30-day averages) of up to 0..958 mgd from Well PW–40, 1.656 mgd from Well PW–41, and 0.389 mgd from Well PW–42, for a total wellfield limit of 3.00 mgd (Docket No. 19901105).

5. Project Sponsor: Goodyear Lake Hydro, LLC. Project Facility: Colliersville Hydroelectric Project, Town of Milford, Otsego County, N.Y. Application for an existing hydroelectric facility.

6. Project Sponsor and Facility: Hastings Municipal Authority, Elder Township, Cambria County, Pa. Application for groundwater withdrawal of up to 0.260 mgd (30-day average) from Mine Spring No. 1 Well.

7. Project Sponsor: Borough of Middletown. Project Facility: SUEZ/Middletown Water System, Middletown Borough, Dauphin County, Pa. Application for renewal of groundwater withdrawal of up to 0.219 mgd (30-day average) from Well 5 (Docket No. 19890701), as well as recognizing historic withdrawals from Wells 1, 2, 3, and 4.

8. Project Sponsor: New York State Office of Parks, Recreation and Historic Preservation. Project Facility: Indian Hills State Golf Course (Irrigation Pond), Towns of Erwin and Lindley, Steuben County, N.Y. Applications for an existing surface water withdrawal of up to 0.940 mgd (peak day) and consumptive use of up to 0.850 mgd (peak day).

9. Project Sponsor and Facility: Seneca Resources Company, LLC (Cowanesque River), Deerfield Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20161218–2).

Project Scheduled for Action Involving a Diversion

1. Project Sponsor: JKLM Energy, LLC. Project Facility: Goodwin and Son's Sand and Gravel Quarry, Roulette Township, Potter County, Pa. Application for renewal of an into-basin diversion from the Ohio River Basin of up to 1.100 mgd (peak day) from the Goodwin and Son's Sand and Gravel Quarry (Docket No. 20161221).

Commission-Initiated Project Approval Modification

1. Project Sponsor: Lycoming County Recreation Authority. Project Facility: White Deer Golf Courses, Brady Township, Lycoming County, Pa. Conforming the grandfathered amount with the forthcoming determination for a groundwater withdrawal of up to 0.169 mgd (30-day average) from Well 2 (Docket No. 20020806).

Opportunity To Appear and Comment

Interested parties may call into the hearing to offer comments to the Commission on any business listed above required to be subject of a public hearing. Given the telephonic nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at *joyler@srbc.net* prior to the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the hearing via telephone will begin at 2:15 p.m. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/.* Comments mailed or electronically submitted must be received by the Commission on or before November 18, 2020, to be considered.

(Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.)

Dated: October 2, 2020.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2020–22170 Filed 10–6–20; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Amendment: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In September 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated a product exclusion process in June 24, 2019, and has granted 16 sets of exclusions under the $200 billion action. These exclusions expired on August 7, 2020. This notice announces the U.S. Trade Representative's determination to make one technical amendment to a previously announced exclusion.

DATES: As stated in the September 20, 2019 notice, product exclusions will apply from September 24, 2018 to August 7, 2020. The amendment announced in this notice is retroactive to the date the original exclusion was published and does not further extend the period for the original exclusion. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FR 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), 84 FR 69012 (December 17, 2019), 85 FR 549 (January 6, 2020), 85 FR 6674 (February 5, 2020), 85 FR 9921 (February 20, 2020), 85 FR 15015 (March 16, 2020), 85 FR 17158 (March 26, 2020), 85 FR 23122 (April 24, 2020), 85 FR 27489 (May 8, 2020), 85 FR 32094 (May 28, 2020), 85 FR 38000 (June 24, 2020), 85 FR 42968 (July 15, 2020), 85 FR 48600 (August 11, 2020), and 85 FR 52188 (August 24, 2020).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent *ad valorem* duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the U.S. Trade Representative established a process by which stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by the $200 billion action from the additional duties. *See* 84 FR 29576 (June 24 notice). The U.S. Trade Representative issued a notice setting out the process for product exclusions and opened a public docket. The exclusions the U.S. Trade Representative granted under the $200 billion action expired on August 7, 2020. *See* 84 FR 38717 (August 7, 2019).

Under the June 24 notice, requests for exclusion were required to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant eight-digit HTSUS subheading covered by the $200 billion action. Requestors were also required to provide the ten-digit HTSUS subheading most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and, specifically, whether the particular

product and/or a comparable product is available from sources in the United States and/or third countries.

- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The June 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The June 24 notice required submission of requests for exclusion from the $200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative periodically would announce decisions. In August 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September, October, November, and December 2019, and January, February, March, April, May, June, and August 2020. *See* 84 FR 49591; 84 FR 57803; 84 FR 61674; 84 FR 65882; 84 FR 69012; 85 FR 549; 85 FR 6674; 85 FR 9921; 85 FR 15015; 85 FR 17158; 85 FR 23122; 85 FR 27489; 85 FR 32094; 85 FR 38000; 85 FR 52188. The status of each request is posted on the portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0005.*

B. Technical Amendment to an Exclusion

The Annex makes one technical amendment to U.S. note 20(w)(27) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 84 FR 49591 (September 20, 2019).

Annex

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, U.S. note 20(w)(27) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS), is modified by deleting ''heading 8471 not incorporating goods of headings 8541 or 8542'' and inserting ''heading 8471, whether or not incorporating fan hubs or LEDs but not incorporating other goods of headings 8541 or 8542'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–22198 Filed 10–6–20; 8:45 am]

BILLING CODE 3290–F1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Extension Amendment: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately $300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duty applicable to the tariff subheadings covered by the action announced in the August 20 notice from 10 to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and has granted eight sets of exclusions under the $300 billion action. On June 26, July 17, and August 11, 2020, the U.S. Trade Representative invited the public to comment on whether to extend particular granted exclusions. On September 2, 2020, the U.S. Trade Representative announced a determination to extend certain previously granted exclusions. This notice announces the U.S. Trade Representative's determination to make one technical amendment to a previously granted exclusion extension.

DATES: The amendment announced in this notice applies as of September 1, 2019, and continues through December 31, 2020. This notice does not further extend the period for product exclusion extensions. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler, Assistant General Counsel Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), 85 FR 15244 (March 17, 2020), 85 FR 17936 (March 31, 2020), 85 FR 32098 (May 28, 2020), 85 FR 35975 (June 12, 2020), 85 FR 38482 (June 26, 2020), 85 FR 41658 (July 10, 2020), 85 FR 43639 (July 17, 2020), 85 FR 44563 (July 23, 2020), 85 FR 48595 (August 11, 2020), and 85 FR 54616 (September 2, 2020).

In a notice published on August 20, 2019 (84 FR 43304 (August 20 notice)), the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on goods of China classified in 3,805 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $300 billion. The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, went into effect September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A (List 1) and Annex C (List 2) of the August 20 notice. *See* 84 FR 45821. On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by List 1 of the $300 billion action from the additional

duties. *See* 84 FR 57144 (October 24 notice). Subsequently, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C (List 2) of the August 20 notice. *See* 84 FR 69447 (December 18, 2019). The U.S. Trade Representative later determined to further modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) from 15 percent to 7.5 percent. *See* 85 FR 3741 (January 22, 2020).

The U.S. Trade Representative issued a notice setting out the process for product exclusions and opened a public docket. In March 2020, the U.S. Trade Representative announced three sets of exclusions. *See* 85 FR 13970; 85 FR 15244; 85 FR 17936. Additional sets of exclusions were published in May, June, July, and August 2020. *See* 85 FR 28693; 85 FR 32098; 85 FR 35975; 85 FR 41658; 85 FR 44563; 85 FR 48627. The exclusions the U.S. Trade Representative granted under the $300 billion action expired on September 1, 2020. See 85 FR 13970.

On June 26, July 23, and August 11, 2020, the U.S. Trade Representative invited the public to comment on whether to extend by up to 12 months, particular exclusions granted under the $300 billion action. *See* 85 FR 38482; 85 FR 43639; 85 FR 48595. On September 2, 2020, the U.S. Trade Representative announced a determination to extend certain previously granted exclusions. *See* 85 FR 54616.

B. Technical Amendments to an Exclusion Extension

The Annex makes one technical amendment to U.S. note 20(jjj)(53) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 85 FR 54616 (September 2, 2020).

Annex

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, note 20(jjj)(53) to Subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS), is modified by deleting ''Bright C1060 galvanized round wire, containing by weight 0.6 percent or more of carbon, measuring at least 0.034 mm but not more than 0.044 mm in diameter'' and inserting ''Bright C1060 round wire, plated or coated with zinc, containing by weight 0.6 percent or more of carbon, with a diameter measuring 0.034 mm or more but less than 1 mm'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, note 20(jjj)(53) to Subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS), is modified by deleting ''Bright C1060 galvanized round wire, containing by weight 0.6 percent or more of carbon, measuring at least 0.034 mm but not more than 0.044 mm in diameter'' and inserting ''Bright C1060 round wire, plated or coated with zinc, containing by weight 0.6 percent or more of carbon, with a diameter measuring 0.034 mm or more but less than 1 mm'' in lieu thereof.

[FR Doc. 2020–22200 Filed 10–6–20; 8:45 am]

BILLING CODE 3290–F1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Amendment: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately $300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duty applicable to the tariff subheadings covered by the action announced in the August 20 notice from 10 to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to make one technical amendment to a previously granted exclusion.

DATES: The amendment announced in this notice applies as of September 1, 2019, the effective date of List 1 of the $300 billion action. It is retroactive to the date the original exclusion was published and does not further extend the period for the original exclusion. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler, Assistant General Counsel Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), 85 FR 15244 (March 17, 2020), 85 FR 17936 (March 31, 2020), 85 FR 32098 (May 28, 2020), 85 FR 35975 (June 12, 2020), 85 FR 41658 (July 10, 2020), and 85 FR 44563 (July 23, 2020).

In a notice published on August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on goods of China classified in 3,805 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $300 billion. *See* 84 FR 43304 (August 20 notice). The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, went into effect September 1, 2019. List 2, which is set out in Annex C of the August 20 notice,

was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A (List 1) and Annex C (List 2) of the August 20 notice. *See* 84 FR 45821. On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by List 1 of the $300 billion action from the additional duties. *See* 84 FR 57144 (the October 24 notice). Subsequently, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C (List 2) of the August 20 notice. *See* 84 FR 69447 (December 18, 2019). The U.S. Trade Representative later determined to further modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) from 15 to 7.5 percent. *See* 85 FR 3741 (January 22, 2020).

Under the October 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant eight-digit subheading covered by the $300 billion action. Requestors also had to provide the ten-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years, among other information. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The October 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objectives of the Section 301 investigation.

The October 24 notice required submission of requests for exclusion from List 1 of the $300 billion action no later than January 31, 2020, and noted that the U.S. Trade Representative periodically would announce decisions. In March 2020, the U.S. Trade Representative announced three sets of exclusions. *See* 85 FR 13970; 85 FR 15244; 85 FR 17936. Additional sets of exclusions were published in May, June, July, and August 2020. *See* 85 FR 28693; 85 FR 32098; 85 FR 35975; 85 FR 41658; 85 FR 44563; 85 FR 48627. The status of each request is posted on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0017.*

B. Technical Amendment to an Exclusion

The Annex makes one technical amendment to U.S. note 20(ddd)(21) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 85 FR 41658 (July 10, 2020).

Annex

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, note 20(ddd)(21) to Subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS), is modified by deleting ''Bright C1060 galvanized round wire, containing by weight 0.6 percent or more of carbon, measuring at least 0.034 mm but not more than 0.044 mm in diameter'' and inserting ''Bright C1060 round wire, plated or coated with zinc, containing by weight 0.6 percent or more of carbon, with a diameter measuring 0.034 mm or more but less than 1 mm'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–22197 Filed 10–6–20; 8:45 am]

BILLING CODE 3290–F1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Extension Amendments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Effective September 24, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated an exclusion process on June 24, 2019, and has granted 16 sets of exclusions under the $200 billion action. These exclusions expired on August 7, 2020. On May 6 and June 3, 2020, the U.S. Trade Representative invited the public to comment on whether to extend particular granted exclusions. On August 11, 2020, the U.S. Trade Representative announced a determination to extend certain previously granted exclusions. This notice announces the U.S. Trade Representatives determination to make two technical amendments to previously extended exclusions.

DATES: The amendments announced in this notice apply as of August 7, 2020, and continue through December 31, 2020. This notice does not further extend the period for product exclusion extensions. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Assistant General Counsel Benjamin Allen, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FR 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), 84 FR 69012

(December 17, 2019), 85 FR 549 (January 6, 2020), 85 FR 6674 (February 5, 2020), 85 FR 9921 (February 20, 2020), 85 FR 15015 (March 16, 2020), 85 FR 17158 (March 26, 2020), 85 FR 23122 (April 24, 2020), 85 FR 27489 (May 8, 2020), 85 FR 32094 (May 28, 2020), 85 FR 38000 (June 24, 2020), 85 FR 42968 (July 15, 2020), 85 FR 48600 (August 11, 2020), and 85 FR 52188 (August 24, 2020).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent *ad valorem* duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the U.S. Trade Representative established a process by which stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by the $200 billion action from the additional duties. *See* 84 FR 29576 (June 24 notice). The U.S. Trade Representative issued a notice setting out the process for product exclusions and opened a public docket. The exclusions the U.S. Trade Representative granted under the $200 billion action expired on August 7, 2020. *See* 84 FR 38717 (August 7, 2019).

On May 6 and June 3, 2020, the U.S. Trade Representative invited the public to comment on whether to extend by up to 12 months, particular exclusions granted under the $200 billion action. *See* 85 FR 27011; 85 FR 34279 ($200 billion extension notices). On August 11, 2020, the U.S. Trade Representative announced a determination to extend certain previously granted exclusions. *See* 85 FR 48600.

B. Technical Amendments to Exclusion Extensions

Paragraph A of the Annex makes technical amendments to U.S. note 20(iii)(57) and U.S. note (iii)(159) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 85 FR 48600 (August 11, 2020).

Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 7, 2020, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. U.S. note 20(iii)(57) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States, is modified by deleting ''Mixtures containing 2-(dimethylamino)ethanol (CAS No. 108–01–0)'' and inserting ''Mixtures containing N,Ndimethyldodecan-1-amine (CAS No. 112–18–5) and N,N-dimethyltetradecan-1-amine (CAS No. 112–75–4)'' in lieu thereof.

2. U.S. note 20(iii)(159) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States, is modified by deleting ''heading 8471 not incorporating goods of headings 8541 or 8542'' and inserting ''heading 8471, whether or not incorporating fan hubs or LEDs but not incorporating other goods of headings 8541 or 8542'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–22199 Filed 10–6–20; 8:45 am]

BILLING CODE 3290–F1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Additional Public Comment Period—Notice of Availability of a Draft Environmental Impact Statement (EIS) for the Proposed LaGuardia Access Improvement Project at LaGuardia Airport (LGA), New York City, Queens County, New York

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

ACTION: Notice of additional 15-day public comment period for the Draft Environmental Impact Statement for the proposed LaGuardia Access Improvement Project at LaGuardia Airport (LGA), New York City, Queens County, New York.

SUMMARY: This notice provides an additional 15-day public comment period for the Draft Environmental Impact Statement (EIS) for the proposed LaGuardia Airport Access Improvement Project prepared to disclose the potential environmental impacts resulting from the Proposed Action, including real property transactions under the New York State Eminent Domain Procedures Law. This notice announces the extension of the public comment period to solicit public comments on the Draft EIS.

DATES: The public comment period on the Draft EIS started on August 21, 2020 and has been extended to end on October 20, 2020. All comments must be received by no later than 5:00 p.m. Eastern Daylight Time, Tuesday, October 20, 2020.

ADDRESSES: Oral comments on the Draft EIS may be presented by leaving a voicemail at (855) LGA–EIS9 or (855) 542–3479. Written comments on the Draft EIS may be submitted via the following methods:

- Online on the project website at *https://www.lgaaccesseis.com/formal-comment.*
- Email to *comments@lgaaccesseis.com.*
- U.S. Mail to Mr. Andrew Brooks, Environmental Program Manager, Eastern Region Office, AEA–610, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434.

Comments on the Draft EIS will help FAA arrive at the best possible informed decision about the proposal. If you choose to include your name, address and telephone number, email, or other personal identifying information in your comment, be advised 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, FAA cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Brooks, Environmental Program Manager, Eastern Region Office, AEA–610, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434. Telephone: 718–553–2511.

SUPPLEMENTARY INFORMATION: This notice continues the public comment period on the Draft EIS for the LaGuardia Airport Access Improvement Project announced in the Notice of Availability of a Draft Environmental Impact Statement (EIS) and Notice of Public Workshops and Hearings for the Proposed LaGuardia Access Improvement Project at LaGuardia Airport (LGA), New York City, Queens County, New York, 85 FR 51142, August 19, 2020.

The Draft EIS was prepared in response to a proposal presented by the Port Authority of New York and New Jersey (Port Authority). The Port Authority operates LGA under a lease agreement with the City of New York. FAA must decide whether to approve, pursuant to 49 U.S.C. 47106 and 47107 relating to the eligibility of the Proposed Action for federal funding under the Airport Improvement Program (AIP) and/or under 49 U.S.C. 40117, as implemented by 14 CFR 158.25, to impose and use passenger facility charge (PFC) revenue collected for the Proposed Action to assist with construction of potentially eligible development items shown on the Airport Layout Plan (ALP). FAA approval of the eligibility for federal funding under AIP or to impose and use PFCs is a Federal action that must

comply with NEPA requirements. FAA, as lead federal agency, invited the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, New York State Department of Environmental Conservation, New York State Department of Transportation, and New York State Office of Parks, Recreation and Historic Preservation to participate as cooperating agencies, which they have accepted, as described under 40 CFR 1501.6(a)(1).

The Draft EIS presents the purpose and need for the Proposed Action, analysis of reasonable alternatives, discussion of impacts for each reasonable alternative, and support appendices. Pursuant to 40 CFR 1502.14(d), the No Action Alternative is also assessed in the Draft EIS as the baseline for comparison purposes. The Proposed Action includes:

- Construction of an above ground fixed guideway automated people mover (APM) system approximately 2.3 miles in length that extends from the future LGA Central Hall Building to the Metropolitan Transportation Authority (MTA) Long Island Rail Road (LIRR) Mets-Willets Point Station and the New York City Transit (NYCT) 7 Line Mets-Willets Point Station;
- construction of two on-Airport APM stations (Central Hall APM Station and East APM Station) and one off-Airport APM station at Willets Point (Willets Point APM Station) that provides connections to the Mets-Willets Point LIRR and NYCT 7 Line stations;
- construction of passenger walkway systems to connect the APM stations to the passenger terminals, parking garages, and ground transportation facilities;
- construction of a multi-level APM operations, maintenance, and storage facility (OMSF) that includes up to 1,000 parking spaces (500 for airport employees, 250 for MTA employees, 50 for APM employees, and 200 for replacement Citi Field parking);
- construction of three traction power substations: One located at the on-Airport East Station, another at-grade west of the proposed Willets Point Station just south of Roosevelt Avenue, and the third at the OMSF to provide power to the APM guideway;
- construction of a 27 kV main substation located adjacent to the OMSF structure on MTA property;
- construction of utilities infrastructure, both new and modified, as needed, to support the Proposed Action, including a permanent stormwater outfall into Flushing Creek and a temporary stormwater outfall into Flushing Creek; and
- acquisition of temporary and permanent easements.

The Proposed Action also includes various connected actions, including: Utility relocation and demolition of certain existing facilities; a temporary MTA bus storage/parking facility; relocation of up to 200 Citi Field parking spaces; demolition and replacement of the Passerelle Bridge; temporary walkway to maintain access between the transit stations and Flushing Meadows-Corona Park; modifications to the MTA LIRR Mets-Willets Point Station, including service changes to the LIRR Port Washington Line; and the relocation of a boat lift, finger piers and connected timber floating dock, Marina office and boatyard facility, boat storage and parking, and operations shed, part of the World's Fair Marina.

FAA provides the following notices:

- Pursuant to 36 CFR 800.8(c) that it is using the NEPA process to notify the public of FAA's finding that the proposed undertaking would adversely affect properties listed or eligible for listing on the National Register of Historic Places and is seeking public comment on the measures proposed to avoid, minimize, or mitigate such effects disclosed in the Draft EIS. A Draft Memorandum of Agreement to resolve adverse effects to historic properties is included in Appendix K.11 of the Draft EIS.
- Pursuant to Section 4(f) of the DOT Act, FAA has prepared a Draft Section 4(f) Evaluation (see Appendix I of the Draft EIS). The Proposed Action would have a significant impact on Section 4(f) resources and is seeking public comments on impacts and proposed mitigation disclosed in Chapter 3.8 of the Draft EIS.
- Pursuant to DOT Order 5610.2(a), DOT Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, the Proposed Action would have a significant impact on minority environmental justice populations and is seeking public comments on impacts and proposed mitigation disclosed in Chapter 3.14 of the Draft EIS.
- Pursuant to Executive Order 11990, Protection of Wetlands, that the Proposed Action would temporarily affect less than 1 acre of jurisdictional wetlands in Flushing Creek and less than 1 acre of temporary and permanent impact in Flushing Bay. Impacts to these aquatic resources are disclosed in Chapter 3.16 of the Draft EIS.
- Pursuant to Executive Order 11988, Floodplain Management that the Proposed Action would not result in a significant encroachment on floodplains. Impacts to floodplains are disclosed in Chapter 3.16 of the Draft EIS.

FAA encourages all interested parties to provide comments concerning the scope and content of the Draft EIS. Comments should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the assessment of the Proposed Action or merits of its alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the viewers' interests and concerns using quotations and other specific references to the Draft EIS and related documents. This commenting procedure is intended to ensure that substantive comments and concerns are available to FAA in a timely manner so that FAA has an opportunity to address them. Matters that could have been raised with specificity during the comment period on the Draft EIS may not be considered if they are raised for the first time later in the decision process.

Following the public comment period, FAA will prepare a Final EIS and Record of Decision pursuant to 40 CFR 1503.4(c) [Council of Environmental Quality regulations] and FAA Orders 1050.1F and 5050.4B. The FAA may issue a single document that consists of the Final Environmental Impact Statement and Record of Decision pursuant to 49 U.S.C. 304a(b) unless the FAA determines that statutory criteria or practicability considerations preclude issuance of such a combined document.

Issued in Jamaica, New York, October 2, 2020.

Sukhbir Gill,

Assistant Manager, New York Airport District Office, Airports Division, Eastern Region.

[FR Doc. 2020–22207 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0862]

COVID–19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2020/2021 Scheduling Season

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

ACTION: Extension of limited waiver of the minimum slot usage requirement.

SUMMARY: The FAA has determined to extend through March 27, 2021, the coronavirus disease 2019 (COVID–19)-related limited waiver of the minimum slot usage requirement at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) that the FAA already has made available through October 24, 2020, with additional conditions as described herein. In addition, the FAA also has determined to extend, through March 27, 2021, its COVID–19-related policy for prioritizing flights canceled at designated International Air Transport Association (IATA) Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season, also with additional conditions as described in this notice. These IATA Level 2 airports include Chicago O'Hare International Airport (ORD), Newark Liberty International Airport (EWR), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO). These extensions remain subject to the stated policy on reciprocity that applied to the COVID–19-related relief that the FAA earlier granted through October 24, 2020.

DATES: The relief announced in this notice is available for the Winter 2020/2021 scheduling season, which runs from October 25, 2020 through March 27, 2021. Conditions on the relief announced in this notice require compliance beginning on October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Bonnie Dragotto, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–3808; email: *bonnie.dragotto@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** on March 16, 2020 (85 FR 15018), the FAA announced certain relief through May 31, 2020, in light of impacts on air travel demand related to the COVID–19 public health emergency.[1] As announced in that notice, through May 31, 2020, the FAA waived the minimum usage requirement as to any slot associated with a scheduled nonstop flight between JFK, LGA, or DCA, respectively, and another point that was canceled as a direct result of COVID–19-related impacts.[2] In addition, that notice announced that the FAA would prioritize flights canceled due to COVID–19 at designated IATA Level 2 airports in the United States—including ORD, EWR, LAX, and SFO—through May 31, 2020, for purposes of establishing a carrier's operational baseline in the next corresponding season.[3] In granting this relief, the FAA asserted its expectation that foreign slot coordinators would accommodate U.S. carriers with reciprocal relief. The FAA further stated that it would continue to monitor the situation and might augment the waiver as circumstances warrant.

Subsequently, following a notice of opportunity for interested persons to show cause why the FAA should or should not extend the relief provided due to continuing COVID–19-related impacts on demand for air travel (85 FR 16989; Mar. 25, 2020), the FAA extended the relief through October 24, 2020 (85 FR 21500; Apr. 17, 2020). The FAA explained its intent to provide carriers with maximum flexibility during this unprecedented situation and to support the long-term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States.

On September 11, 2020, the FAA issued a notice of proposed extension of the limited relief already provided through the Summer 2020 scheduling season, with additional conditions, which was published in the **Federal Register** on September 15, 2020 (85 FR 57288). In this notice, the FAA invited comment on its specific proposals for continued relief from the minimum slot usage requirements and related policies due to COVID–19. Specifically, the FAA proposed to extend the relief already made available at U.S. slot-controlled airports (DCA, JFK, and LGA) with additional conditions through the Winter 2020/2021 season. The FAA also proposed limited additional relief at U.S. designated IATA Level 2 airports (EWR, LAX, ORD, and SFO) on a conditional basis through December 31, 2020.

The FAA notes that carriers have not begun providing any significant slot returns or schedule updates for Winter 2020/2021, as they await a final decision on FAA policies relative to waiving minimum usage requirements at DCA, LGA, and JFK and relief at Level 2 airports for prioritization in Winter 2021/2022. Several carriers have advised the FAA informally that they already have identified slot returns and schedule reductions for some or all of the scheduling season, and that they will provide additional information after the FAA finalizes its usage waiver policy. The FAA encountered similar carrier behavior earlier this year when it initially granted relief through May 31, 2020, before extending the waiver through October 24, 2020.

Current COVID–19 Situation

Since the FAA's September 11, 2020 notice was issued, COVID–19 has continued to cause disruption globally and within the United States. The World Health Organization (WHO) reports COVID–19 cases in more than 200 countries, areas, and territories worldwide. For the week ending September 27, 2020, the WHO reported more than 2 million new COVID–19 cases and 36,475 new deaths, bringing the cumulative total to over 32.7 million

[1] The FAA has authority for developing plans and policy for the use of the navigable airspace and for assigning by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.'' *See* 49 U.S.C. 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR 93.227 at DCA and under the authority of Orders at JFK and LGA. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

[2] Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, the FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. *See* FN 1. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018), the April 17, 2020, notice (85 FR 21500), and this notice extends to all allocated slots, including slots allocated by exemption.

[3] The FAA notes that a minimum usage requirement does not apply at designated IATA Level 2 airports in the United States. However, established procedures under the IATA Worldwide Slot Guidelines (WSG) allow for the prioritization of such cancelations in subsequent corresponding seasons consistent with the FAA's policy statement.

confirmed COVID–19 cases and 991,000 deaths.[4]

International travel recommendations from the Centers for Disease Control and Prevention (CDC) categorize nearly 200 countries, areas, and territories worldwide under Level 3—COVID–19 Risk Is High. Although the U.S. Department of State's Global Health Advisory was downgraded from Level 4—Do Not Travel for certain destinations, advisories ranging from Level 2—Exercise Increased Caution to Level 3—Reconsider Travel and up to Level 4 remain in effect for many parts of the world due to continuing impacts of COVID–19.[5] The U.S. Department of State advises that challenges to any international travel at this time may include mandatory quarantines, travel restrictions, and closed borders. The U.S. Department of State notes further that foreign governments may implement restrictions with little notice, even in destinations that were previously low risk.[6] Accordingly, the U.S. Department of State warns Americans choosing to travel internationally that their trip may be disrupted severely and it may be difficult to arrange travel back to the United States.[7]

Within the United States, the CDC reported 7,260,465 total cases and 207,302 deaths from COVID–19 as of October 2, 2020, with 302,093 new cases in the prior seven days.[8] The CDC advises prospective domestic travelers to consider whether their destination has requirements or restrictions for travelers, and notes that state, local, and territorial governments may have travel restrictions in place, including testing requirements, stay-at-home orders, and quarantine requirements upon arrival. A national emergency related to COVID–19 remains in effect pursuant to the President's March 13, 2020 Proclamation.[9]

[4] COVID–19 weekly epidemiological update, September 28, 2020, available at: *https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports.*

[5] *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/.*

[6] *https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html.*

[7] *Id.*

[8] CDC COVID Data Tracker, updated October 2, 2020, available at *https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_casesinlast7days.*

[9] *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

Standard Applicable to This Waiver Proceeding

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in the FAA's initial decision extending relief due to COVID–19 impacts.[10]

At JFK and LGA, each slot must be used at least 80 percent of the time.[11] Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.[12]

At DCA, any slot not used at least 80 percent of the time over a two-month period also will be recalled by the FAA.[13] The FAA may waive this minimum usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding carrier and which exists for a period of nine or more days.[14]

When making decisions concerning historical rights to allocated slots, including whether to grant a waiver of the usage requirement, the FAA seeks to ensure the efficient use of valuable aviation infrastructure and maximize the benefits to both airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancelations under all but the most unusual circumstances. Carriers proceed at risk if they make decisions in anticipation of the FAA granting a slot usage waiver.

Summary of Comments and Information Submitted

The FAA received 196 comments [15] on the proposal from stakeholders and other persons, including IATA, Airlines for America (A4A), the oneworld Alliance, the Star Alliance, the Cargo Airline Association (CAA), the National Air Carrier Association (NACA), Airports Council International-World (ACI World), Airports Council International-North America (ACI–NA), Airlines for Europe (A4E), the Latin American and Caribbean Air Transport Association (ALTA), the Association of Asia Pacific Airlines, the Arab Air Carriers Organization, 10 U.S. carriers,[16] 33 foreign carriers,[17] the International Association of Machinists and Aerospace Workers (IAMAW), the Professional Flight Control Association (PAFCA–UAL), the Association of Flight Attendants-CWA, AFL CIO, 22 members of Congress, 10 state/elected officials, 54 other non-aviation businesses and industry organizations, and 71 individuals (most of whom identified as airline or other aviation and travel industry employees).[18] In addition, one foreign carrier also submitted a comment to the U.S. Department of State, which has been included in the docket for this proceeding with all other comments not containing proprietary or confidential business information.

Most incumbent U.S. and foreign airline commenters, as well as their industry representatives and others, support an extension of relief and advocate for aligning the duration of relief at slot-controlled and Level 2 airports in the United States through the upcoming Winter 2020/2021 season. These commenters also generally

[10] *See* 85 FR 15018 (Mar. 16, 2020).

[11] Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 47065 at 58255 (Sep. 18, 2020).

[12] At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season. *See* JFK Order, 85 FR at 58260. At LGA, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. *See* LGA Order, 85 FR at 58257.

[13] *See* 14 CFR 93.227(a).

[14] *See* 14 CFR 93.227(j).

[15] The FAA notes that some comments were submitted on behalf of multiple persons. For example, the FAA received three Congressional letters, which collectively reflected signatures from 22 members. Four commenters, including U.S. and foreign carriers, submitted comments marked as proprietary and confidential. The information contained within comments marked as Proprietary Information (PROPIN) was consistent with information submitted by other airline industry commenters. The FAA will maintain the confidentiality of this information to the extent permitted by law.

[16] Comments were submitted by the following U.S. carriers: Alaska Airlines, Inc., Allegiant Air, LLC, Delta Air Lines, Inc., JetBlue Airways Corp., Southwest Airlines Co., Spirit Airlines, Inc., United Airlines, Inc., Eastern Airlines, LLC, and Polar Air Cargo Worldwide, Inc. United and one additional U.S. carrier submitted comments, or a portion thereof, marked as proprietary and confidential.

[17] Comments were submitted by the following foreign carriers: Aeromexico, Air Canada, Air China, Air France/KLM, Air New Zealand, Air Serbia, Alitalia, All Nippon Airways, Austrian Airlines, Avianca, Brussels Airlines, Cathay Pacific, Copa, Emirates, Ethiopian Airlines, Eurowings, Finnair, Iberia, LATAM, LOT Polish Airlines, Deutsche Lufthansa, Norwegian Air International, Ltd., Qantas Airways, Ltd., Royal Air Maroc, SAS Airlines, Singapore Airlines, Swiss International Air Lines Ltd., Turkish Airlines Inc., Virgin Atlantic, VivaAerobus, and Xiamen Airlines. Two additional foreign carriers submitted comments marked as proprietary and confidential.

[18] The comment period closed on September 22, 2020. Comments considered in finalizing the policy announced in this notice include late-filed submissions received as of September 25, 2020.

opposed the FAA's proposal for bulk (monthly) slot returns four weeks in advance of the date of operation, which is equivalent to four to eight weeks in advance of certain operations. While some commenters, particularly among the airport community, support the FAA's approach for the Winter 2020/2021 season as proposed, several carriers assert that the policies are inadequate and/or unlikely to have the intended effect. Several commenters suggest that the FAA should close the door to any further relief beyond the Winter 2020/2021 season, while other commenters offer alternative approaches to force full-season bulk returns for permanent reallocation. Some commenters seek to supersede this waiver proceeding entirely by encouraging the Federal Government to establish broader economic/market-based aviation industry recovery policies and/or change the regulatory policy landscape for managing slots and schedule facilitation in the United States. Some comments were limited to discussing either the proposal for slot-controlled airports or the proposal for Level 2 airports. The comments are summarized in more detail below.

Comments Concerning FAA's Proposal for Continued Relief at U.S. Slot-Controlled Airports (DCA, JFK, and LGA) and Other General Provisions of the FAA's Proposal

Eastern Airlines commented that it fully supports the FAA's proposal to extend the COVID–19-related limited waiver of the minimum slot usage requirement at JFK through March 27, 2021.

ACI World expresses full support for the FAA's proposal, including the attachment of strict conditions to the proposed extension of the waiver, which ACI World believes are instrumental to support the recovery of aviation by ensuring waivers are not used ''to insulate slots from market realities during the recovery period.'' ACI World comments that the strict conditions proposed would avoid unintended impacts on competition and ensure consumers are protected from last-minute cancellations. ACI World asserts the slot return condition is ''necessary to incentivize airlines to return slots. . .to enable airports to safely plan operations, complying with physical distancing requirements and encouraging efficient reallocation when possible;'' the condition excluding new allocations from relief ''will avoid the possibility of airlines building up historics for the post-COVID–19 future;'' and the exclusion of newly transferred slots from relief will ''ensure that airlines that are ready and able to operate to support the recovery are not blocked from entering airports by anti-competitive holding of slots by airlines exiting these markets.'' ACI World emphasizes that '' 'ghost flights' are not justified'' and ''[u]nder no circumstances are air carriers required to operate flights because of slot usage requirements'' as ''[c]arriers who reported being 'forced' to operate such flights actually made a strategic decision to protect their slot portfolio.''

ACI–NA supports the FAA's proposal, commenting that the proposal ''acknowledges the critical role that access to the most congested airports plays in economic vitality for communities, the significance of recognizing the cataclysmic impact from COVID–19 to the aviation industry, and the importance of providing price and service competition where air carriers see opportunity as opposed to allowing precious resources to be squandered because of historical happenstance.'' ACI–NA believes the proposal is ''a strong restatement that [slot resources] are not the property of the air carriers'' consistent with 14 CFR 93.223(a). ACI–NA comments that ''[w]hile ACI–NA is not advocating for a wholesale realignment of slot and access portfolios at this time, the Notice should be the foundation for a careful investigation and analysis of the changing landscape in the air service competitive environment.'' ACI–NA remarks that the proposal is ''a reasonable step and consistent with the determination of other civil aviation authorities across the world,'' but ''it is likely that even with four to eight weeks of notice to the air carrier community of available slots, not all carriers have the flexibility to respond commercially to take advantage of these openings.'' ACI–NA recommends ''that DOT and FAA carefully monitor how the proposed system is applied during W20 and account for the results, to include expressions of interest by new entrants who consider the slot regime to be a barrier to entry, in any future consideration of limited relief of slot utilization requirements through expanding the timeframe for [returns] to further encourage utilization of these scarce resources.''

The PANYNJ comments that it fully agrees with comments submitted by ACI–NA. In addition, given that ''fundamental shifts in the industry have occurred,'' the PANYNJ suggests that ''[p]olicy should reflect the industry's new reality, and market-distorting waivers should not persist for years until pre-COVID demand levels return.'' The PANYNJ further ''concurs with the assertion that [ghost flights] are an inefficient use of resources and are inconsistent with the purpose of slot-controls'' and believes that this issue ''should continue to be of importance once demand for air travel fully rebounds.'' PANYNJ comments that ''no carrier is ever forced to conduct operations to maintain slots, and carriers unable to sustain genuine operations consistent with their slot portfolio should return unused slots for reallocation.''

JetBlue and Alaska support the FAA's proposal to extend relief at slot-controlled airports in the United States through the Winter 2020/2021 season, and JetBlue further notes that it ''accepts the FAA's proposed conditions, which are intended to balance the needs and requirements of various stakeholders.''

The CAA fully supports the FAA's proposal ''and recognize[s] that airlines should not be penalized for their temporary inability to meet the required slot utilization rates because of flight cancellations stemming from drastically reduced passenger traffic caused by the extraordinary and unforeseen COVID–19 pandemic.'' The CAA further emphasizes the ''expanding needs [of cargo carriers] for service at many of the communities with slot constrained airports'' and asserts that ''it would be in the public interest for the FAA to temporarily reallocate to cargo airlines the slots not used by passenger airlines'' given the interests served by air cargo service in support of transporting medical supplies and equipment to combat COVID–19. The CAA notes that the DHS Cybersecurity and Infrastructure Security Agency has recognized air cargo workers as ''Essential Critical Infrastructure Workers'' exempt from shelter-in-place rules. The CAA also notes that the upcoming ''October-December timeframe is when demand will peak to the highest point in the year and this year will undoubtedly present challenges for the air cargo industry.'' CAA urges the FAA to finalize the relief proposed through March 27, 2021 and to ''make available unused slots for temporary reallocation to air cargo operations.''

While IATA generally supports the FAA's intent in providing further relief from the minimum slot usage requirements for the full Winter 2020/2021 season at DCA, JFK, and LGA, IATA opposes the FAA's proposed conditions for a carrier to benefit from the proposed waiver extension. IATA asserts that ''[f]ailure to eliminate these limitations would negatively and unnecessarily impact all carriers operating to U.S. Level 2 and [slot-

controlled] airports as well as expose them to restrictions to their operations around the world.'' IATA urges the FAA to amend the proposed slot return condition ''to a simple rolling deadline prior to operation in line with the rest of the world and grant exemptions for those slots not covered by the return period at the start of the season.'' IATA notes that as carriers at U.S. slot-controlled airports would be required to return slots that will not be used at least four weeks in advance by the first day of the preceding month, the effect is a return deadline of four to eight weeks prior to operation to be eligible for relief. IATA asserts that this ''far exceeds the conditions of other waivers globally, which range from no [return] deadline to maximum four weeks in advance'' and ''will result in cancellations not dictated by market demand and hinder recovery further.'' IATA asserts the proposal is ''confusing in terms of implementation, impractical, and unjustifiable given current demand and booking behaviors'' and further that ''[i]t is also made practically impossible by government restrictions that limit the ability of airlines to plan schedules in advance.''

IATA points to evolving government travel advisories, changes to crew restrictions and requirements, testing regimes, quarantines, and passenger booking behavior [19] as examples of considerations that make it challenging for carriers ''to make decisions on their operating schedule by the first of the month prior to the operating month. . .'' Thus, according to IATA, carriers would be likely to cancel more flights than otherwise necessary to preserve their long-term access to slots. IATA references a collaborative approach used to reach consensus by the European Commission (EC), which has resulted in a three-week deadline being applied voluntarily at all European Union and European-coordinated airports for the Winter 2020/2021 season, thus concluding that it may be advisable for the FAA to consider the EC agreed upon deadline. IATA further notes practical challenges associated with the proposed return deadline given the timing of the announcement of the proposal and seeks to ensure relief will be provided to carriers to address concerns ''that slots for the last week of October and the whole of November will not benefit from the waiver unless they are exempted from any return deadlines.''

[19] IATA's analysis and airline data shows that 67% of U.S. domestic bookings and 46% of U.S. international bookings are currently made less than four weeks from travel.

IATA points out that issuance of the FAA's final waiver policy in October would prevent carriers from being able to meet October and November deadlines.

IATA also seeks clarification of the conditions for newly allocated slots, treatment of transfers, and the exception for certain cancellations that have not met the conditions ''to ensure maximum benefit to the industry.'' IATA urges the FAA to indicate that it will consider ''border or airport closures; quarantine requirements; load restrictions/passenger caps; and onerous or economically infeasible testing protocols'' in determining whether to grant an exception from any conditions imposed on the waiver and to establish a ''procedure to allow for this alleviation without unnecessary bureaucratic review and processing that would unnecessarily burden both the slot coordinator and airlines.'' IATA supports a condition that new slots allocated for the Winter 2020/2021 season be excluded from the waiver and remain subject to minimum slot usage requirements. However, IATA asks the FAA to clarify the condition for new allocations and, specifically, whether it applies to slots allocated for purposes of the Winter 2020/2021 season regardless of the timing of the new allocation. IATA also asks for additional clarification concerning the circumstances under which a transfer would not be eligible for the waiver. IATA assumes that condition ''would only apply to those transactions undertaken 14 days post-publication of the waiver that are not continuing long-term transfers.''

A4A generally supports FAA's proposal to make relief from the minimum slot usage requirements available at slot-controlled airports in the United States through the Winter 2020/2021 season. However, A4A opposes the FAA's proposed condition for returns and similarly points to the booking curve, which A4A asserts has ''shifted substantially, with more passengers now booking within just a week or two of departure.'' A4A seeks the alignment of this proposed condition with certain foreign jurisdictions providing for a three-week rolling return deadline consistent with current demand and booking patterns and in order to increase operational flexibility.

The oneworld Alliance generally supports the FAA's consideration of continued relief from the minimum slot usage requirements, but expresses concern that the proposed conditions ''will negatively impact airlines . . . and potentially result in carriers being subject to unfair reciprocal treatment in other jurisdictions.'' In addition, the oneworld Alliance urges FAA ''to amend the condition for the return of unused slots to a four-week deadline prior to operation, to align with conditions globally.''

United generally supports the FAA's proposal for slot-controlled airports to the extent the proposal would preserve the general status quo, but United opposes the imposition of any conditions on the relief made available given ''the entire point of the Notice is to afford relief due to extraordinary circumstances.'' Nevertheless, consistent with comments from IATA and A4A, United urges the FAA to simplify the process and timing for slot returns and to clarify the basis for approving exceptions from the conditions at slot-controlled airports.

Delta supports the FAA's proposal to extend relief from the minimum slot usage requirements at JFK, LGA, and DCA through March 27, 2021, noting that this extension ''will provide carriers with critical flexibility and support the long-term viability of carrier operations at slot-controlled airports in the United States.'' Delta encourages the FAA to amend the proposed return condition ''to allow carriers to return a slot no later than three weeks in advance of the corresponding flight'' in order ''[t]o align the advance slot return requirement with the current demand and booking patterns.'' Delta comments that the proposed condition requiring returns four to eight weeks in advance of an operation ''would cause commercial and operational challenges for Delta and other carriers'' as ''approximately 75% of customer bookings on Delta flights now take place within just four weeks of the scheduled flight, and approximately one-third of passenger bookings have been occurring within just one week of departure.'' Delta notes that a three-week return condition would allow ''more operational flexibility while still supporting the FAA's objective of allowing other interested carriers to operate the unused slots on an *ad hoc* basis'' and be ''more consistent with international slot waiver and return standards.''

Star Alliance supports the FAA's proposal to extend relief at slot-controlled airports in the United States through the end of the Winter 2020/2021 season, but opposes the FAA's proposed return deadline to the extent it ''force[s] airlines to forego flexibility in recovery opportunities'' and diverges from foreign jurisdictions that require returns at most four weeks in advance of the date of planned operation.

With limited exceptions, foreign carriers generally support the full season extension of relief proposed at slot-controlled airports, endorsing the IATA comments and expressing opposition to the FAA's proposed timeline for returning unused slots. Foreign carriers articulate two main concerns about the FAA's proposed deadline for returning slots: (1) That the FAA's return deadline is a global outlier that complicates unified schedule planning; and (2) that the FAA's deadline is too restrictive in the current COVID–19-impacted commercial environment.

Royal Air Maroc comments that the FAA's proposed return deadline ''far exceeds the conditions of other waivers globally, which range from no deadline to maximum four weeks in advance.'' Royal Air Maroc asserts that, ''[g]iven the crisis, airlines are not in a position to make decisions on whether or not to operate certain flights eight weeks prior to departure.'' Ethiopian Airlines also takes issue with the proposed slot return timeline, asking that the ''FAA amend [its] proposal for advance slot returns'' and ''align with the global best practice of requiring returns in advance (one week) of the planned date of operation.''

Carriers propose various return deadline timelines, with some advocating for one week in advance while others proposed two-week, three-week, or four-week rolling return deadlines. Iberia advocates for the FAA to require the return of slots three weeks before the date of the operation. Alitalia is most concerned with the proposed FAA deadline being at the beginning of the preceding month, proposing a ''simple'' four-week rolling deadline instead. Qantas also commented that, ''a simple four-week deadline prior to operation would be appropriate.'' Cathay Pacific supported a two-week return deadline, commenting that the lead-time for cargo services ''will be even shorter than passenger services.''

A4E supports the FAA's proposal to extend relief at slot-controlled airports in the United States through the end of the Winter 2020/2021 season, but expresses concern about certain aspects of the proposal. A4E comments that ''[t]ransatlantic routes are critically important for some [A4E] members, who provide extensive business and leisure connectivity between the United States (U.S.) and Europe, and thereby generate substantial economic and employment benefits on both sides of the Atlantic.'' A4E asserts that ''[c]ontinued slot relief is essential for an industry experiencing its most severe crisis in history'' and notes that ''Eurocontrol's recent traffic scenarios for Europe forecast 55% (6 million) fewer flights in 2020 compared to 2019'' and that ''the overall revenue loss across the industry, including airports and ANSPs, is estimated at €140 billion.'' A4E also asserts that ''[t]raffic is expected to remain 50% down on 2019 by February 2021.'' A4E urges the FAA to reconsider its proposal for slot returns and align its policy with Europe's policy, to require slot returns no later than three weeks in advance of planned operation based on reciprocity concerns and patterns of current demand, which make it impossible ''to predict demand more than two or three weeks in advance under current circumstances.'' A4E also recommends an exception that ''provides for potential alleviation of slot returns made within three weeks if this is caused by circumstances outside of the airline's control and related to crisis (*e.g.* the imposition of travel restrictions at short notice).''

ALTA comments that the proposal to extend relief at slot-controlled and Level 2 airports ''allows airlines to operate flights in an environmentally and financially sustainable manner instead on [sic] focusing on just filling slots.'' However, ALTA is ''concerned that the proposed [conditions] to the waiver will have undue negative impact on all carriers operating to U.S. [slot-controlled] and Level 2 airports and at the same time expose carriers to unfair reciprocal treatment regardless of which U.S. airport they operate from.'' ALTA asserts that the U.S. ''should provide slot relief that is consistent and equal to other countries given the global nature of the airline's operations and slot holdings on each end of the route.'' ALTA therefore urges FAA to amend the condition for returning slots to a simple four-week deadline prior to operation given ''airlines are not in a position to make decisions on whether or not to operate certain flights eight weeks prior to departure.'' ALTA also expresses concern about the timing of the proposal and how usage of slots will be addressed for the early part of the Winter 2020/2021 season. ALTA emphasizes the importance of certainty during this crisis, especially for those carriers ''from Latin America and the Caribbean which have been acutely affected with prohibitions of flying in many cases.''

The Arab Air Carriers Organization comments that ''industry remains in the deepest crisis it has ever experienced with little hope of any return to near normal levels of flying this winter season'' and urges the FAA ''to amend the condition for returning slots to a simple four-week deadline prior to operation in line with the rest of the world.''

One individual expressed support for the FAA's proposal to extend relief at slot-controlled airports through March 27, 2021, but also advocated for a revised return deadline of three to four weeks to be applied on a rolling basis to better align with standards adopted internationally and to reflect the limited ability of carriers to forecast demand up to eight weeks prior to operation.

Polar Air Cargo ''fully supports'' IATA's request to extend relief through the full Winter 2020/2021 season, elaborating that ''all-cargo carriers like Polar benefit from the flexibility provided by these slot waivers to schedule extra-sections, as well as numerous charters, to make up for the lack of belly capacity caused by the suspension of the vast majority of flights by passenger carriers.'' Polar states that ''[t]his has allowed the movement of critical medical supplies the world over and for the global supply chain to survive through service to numerous and usually slot-congested airports.'' However, Polar comments further that ''this policy should be discontinued thereafter to permit all-cargo services, as well as other categories of service that are being pressed to fill the void in air freight capacity, to qualify for permanent awards of the vacated passenger carrier slots starting in the Northern Summer 2021 Season.'' In support of its argument for discontinuation, Polar notes that ''[i]t now appears that the recovery of passenger services will be much slower, the shrinkage of passenger fleets much greater, and the overall frequency of passenger services much lower than anticipated, underscoring the need for the continuation of additional all-cargo lift and the accompanying slot availability.''

Southwest opposes the FAA's proposed extension for relief at slot-controlled airports in the United States through the Winter 2020/2021 season, but urges that, if the FAA nonetheless proceeds with finalizing the proposal, the FAA should affirmatively state in its final decision that ''no further usage waivers will be granted so that all stakeholders will have ample time to plan accordingly.'' Southwest comments that the conditions placed on the relief are insufficient and ''largely impractical'' as they do not provide an adequate incentive or assurance for carriers like Southwest to invest in new service for short-term, *ad hoc* access to slot-controlled airports. Southwest states that, in the absence of a ''guarantee that Southwest would be able to use the reallocated slots

permanently, an investment in new service would not be justified.'' Lastly, Southwest notes that ''[i]f full utilization is required beginning March 28, 2021, Southwest is prepared not only to operate its full complement of slots at both DCA and LGA but would welcome the opportunity to offer additional flights using any slots that are reallocated on a permanent basis.''

Spirit opposes the FAA's proposal in its entirety as ''unacceptably protective of dominant incumbent carriers at the expense of the traveling public and of low-cost carriers ready and willing to serve.'' Spirit advocates for a ''market-based restructuring of domestic competition.'' Spirit asserts that the ''proposal contravenes the procompetitive public interest mandate to which the FAA must adhere and penalizes low-cost and new entrant carriers willing to take on risk and operate new routes and service immediately.''

In lieu of the FAA's proposal, Spirit seeks the removal of slot control rules and schedule facilitation parameters at all airports in the United States, at least with respect to domestic operations, in an effort to ''allow market forces to rebuild demand.'' Spirit suggests a process for reintroducing such parameters in the future ''[i]f and when congestion returns.'' In the absence of such action, Spirit suggests several ways in which the rules governing slots should be amended, including revising the minimum slot usage requirements and by requiring carriers ''to fly larger aircraft on routes that begin and end at large or medium hub airports, using fewer slots, rather than underutilizing slots to prevent new entry.'' Spirit believes that ''discontinuing waivers alone is not enough . . . while keeping the slot regimes in place'' as it encourages incumbents to fly ''empty airplanes to preserve their slot priority when they may never use many of these slots and authorizations again.'' Spirit asserts that the FAA's proposal for slot returns is ''unrealistic, even absurd'' as it does not allow Spirit or other carriers looking to add flights to operate profitably given the lead time necessary for selling flights, crew scheduling and securing long-term leases with assurance of future long-term priority. Spirit comments that the FAA's proposal ''[i]gnores the Department and FAA mandate to set policies in the public interest.'' Spirit asks that the FAA treat domestic and international operations differently and disregard reciprocity concerns raised by other commenters.

Spirit recommends that, if the FAA grants a full-season waiver at slot-controlled airports, slot-holding carriers should be required to determine what they will operate for the entire season in advance and return slots that will not be used by October 1; all returned slots would then be made available for permanent reallocation ''even if the original [slot holders] want them back.'' Spirit suggests that ''FAA can exceed the caps, if necessary, for one or two seasons to allow for continuity of service in the case of low-cost or new entrants, as a scheduling conference is worked out.'' Spirit further urges the FAA to make clear that, barring a major resurgence of COVID–19, this will be the last waiver at slot-controlled airports.

Allegiant comments that ''an extension of the [current] waiver without change would be contrary to the public interest,'' and ''while the modifications stated in the Notice represent an improvement over the existing situation, they do not go far enough and as such, do not adequately serve the public interest'' with reference to 49 U.S.C. 40101. Allegiant comments that ''a public health crisis does not justify hoarding of public assets—in this case, slots at Level 2 and [slot-controlled] airports—by any carrier when others are prepared to utilize at least some of those assets, benefitting the public.'' Allegiant comments that ''[u]nder the FAA's approach, the flexibility reserved for incumbents would confer a competitive advantage on them, given that the most non-incumbents could hope for under the Notice is ad hoc slots made available in monthly installments'' and ''a competitive advantage conferred by a government agency upon any carrier or carriers is contrary to the public interest.'' Allegiant asserts that a proper balancing of interests ''requires that each group be provided an equal opportunity to utilize the public assets in question.''

In lieu of a waiver, Allegiant suggests that the FAA should require ''each incumbent carrier to declare by a date certain which slots it will utilize for the Winter 2020–21 scheduling season and which it will not. Slots retained by an incumbent for the season would be subject to normal FAA use-or-lose requirements. In the case of Level 2 airports, up-to-date winter schedules would be required from incumbents by the same date. Other U.S. carriers wishing to utilize the slots/times thus made available . . . would apply for them by a subsequent date certain, listing the requested slots/times in order of preference for that carrier.'' Allegiant suggests that the FAA then assign slots and priorities and ties could be broken by the FAA using a procedure similar to the DOT's procedure for issuing CARES Act Service exemptions. Allegiant comments that it ''knows of no reason its proposal would be any more complex or time-consuming than the proposal outlined in the Notice,'' which Allegiant asserts ''is silent as to how the slots turned back in one-month increments would be distributed.'' Allegiant urges the FAA ''to modify its proposal so that non-incumbent carriers proposing to utilize available capacity at Level 2 and [slot-controlled] airports during the Winter 2020–21 season will have at least four months (December through March) of uninterrupted use of the slots/times they receive, enabling them to offer service on a realistic basis.''

NACA supports the comments submitted by Spirit and Allegiant and ''believe[s] an extension of these waivers without further modifications creates an anti-competitive atmosphere and would be contrary to the public interest.'' Agreeing with Spirit and Allegiant, NACA believes ''the situation can be easily remedied by simply requiring each incumbent carrier to declare by a date certain which slots it will utilize for the Winter 2020–21 scheduling season and which it will not'' to ''ensure that non-incumbent carriers would have a reasonable opportunity to provide meaningful Winter 2020–21 service utilizing these public assets.''

Exhaustless, Inc. opposes the proposed extension of the waiver of the minimum slot usage requirements. This commenter expresses opposition to the concept and practice of ''grandfathering slots'' and requests enforcement of ''(1) the statutory terms of all air carrier's [sic] economic certificates and (2) the binding case law that declares a legitimate replacement for the prohibited practice of grandfathering slots.''

Comments Concerning the FAA's Proposal for Continued Relief at U.S. Designated IATA Level 2 Airports

As previously explained, ACI World expresses full support for the FAA's proposal; the FAA therefore understands this comment as supportive of the FAA's proposal to provide relief at Level 2 airports through December 31, 2020.

The PANYNJ ''acknowledges that certain key differences exist in the management of [slot-controlled] and Level 2 facilities,'' observes that the absence of slots at Level 2 airports is a ''distinction'' that ''is critical to the success of Level 2 facilities,'' and expresses appreciation that the

distinction ''is acknowledged in the FAA's [proposal].'' The PANYNJ ''also appreciates that consistency is necessary for air carriers to schedule their operations in a commercially viable manner, and that both the FAA and airports have traditionally maintained a historic baseline for schedules properly utilized in the Level 2 environment,'' but notes that ''in the Level 2 environment [FAA] has no legal obligation to maintain such a baseline.''

JetBlue supports the FAA's proposal that for flights at EWR after December 31, 2020, priority would be based on approved schedules as operated for the balance of the scheduling season. JetBlue notes that ''EWR has now been a Level 2 airport for almost five years and JetBlue continues to grow at EWR.'' Moreover, ''[g]iven that EWR is a Level 2 airport where any carrier is free to operate flights at any time, JetBlue certainly supports the FAA providing assurances to any carrier at EWR that it will not lose access to EWR as a result of the partial waiver, if the FAA ultimately decides to adopt its proposal to only extend the EWR waiver until December 31, 2020.''

IATA opposes the FAA's proposal for relief at U.S. designated IATA Level 2 airports, asserting that equal relief should be provided for Level 2 and slot-controlled airports as IATA does not expect industry recovery in the U.S. market until 2023 and internationally until 2025. IATA asserts that Level 2 and slot-controlled airports are effectively similar, particularly in the New York City area given comparable decreases in booking and throughput due to COVID–19,[20] and similar congestion challenges within the market as well as compared to slot-controlled airports elsewhere in the world. IATA asserts that it has ''no data . . . that would provide any basis for differentiating Level 2 and [slot-controlled] airports at the mid-winter 2020/21 season point.'' IATA further asserts that ''[a]irlines will be forced to spend their limited cash to ensure future access to Level 2 airports'' as they ''will be compelled to operate financially unsustainable flights in order to preserve their positions at these Level 2 airports'' where airlines have ''made multi-million/billion and multi-year investments to support their traffic levels at these airports.'' IATA comments that ''even if demand was back to normal levels in January 2021, this partial season approach is coming too late in the winter planning process to permit an 80% flight schedule,'' which depends upon selling tickets, crew and fleet assignments, airport facility access, and airport personnel including airline staff, airport vendors, and security and immigration personnel.

IATA further notes that the FAA's proposal for Level 2 airports coupled with the FAA's policy on reciprocity ''will likely result in other governments imposing additional restrictions on their previous full season waiver grant for U.S. carriers serving foreign Level 2 and possibly [slot-controlled] airports,'' which ''will put U.S. carriers at a disadvantage versus their competitors at a time when they can least afford it and force them to spend precious dollars to maintain their positions at these international hubs.'' IATA references several reciprocity provisions adopted by foreign jurisdictions as examples likely to lead to this result. Lastly, IATA also expresses concerns regarding the proposed return condition within the context of the Level 2 proposal to the extent that the return deadline exceeds the conditions of other waivers globally and is ''unjustifiable given current demand and booking behaviors.''

A4A opposes the FAA's proposal for relief at Level 2 airports through December 31, 2020 and seeks alignment of relief at these airports with the full-season extension of relief at slot-controlled airports. A4A contends that the failure to align these policies will ''lead to a distortion in the market and place dramatic burdens on airlines, put undue strain on American businesses and workers, impact the environment, and set the FAA apart from other global regulators.'' A4A offers that the pandemic and regulatory response thereto have decimated demand for air travel[21] and, looking ahead, ''passenger traffic is not expected to return to 2019 levels until at least 2024, maybe longer for international traffic.''

Consistent with IATA's comments, A4A asserts that the proposal for Level 2 airports will have a substantial adverse impact on the entire industry and, particularly on A4A members that operate at these airports. A4A indicates that carriers already have made plans in reliance on a forthcoming full-season waiver at Level 2 airports. A4A also asserts that based on the proposal, carriers would have to ''quickly re-hire staff, ensuring that all the training and certification requirements are met, which takes time.'' A4A contends that ''[w]hile no carrier would compromise safety, the resources and rush that will need to be employed to ensure this happens by January 1, 2021 will be significant and avoidable.'' A4A ''submits that the uncertainty will further destabilize airlines and make recovery even more difficult and costly.'' Moreover, A4A reiterates that ''the bifurcation [of relief at Level 2 and slot-controlled airports] will distort markets and/or cause airlines to fly mostly empty airplanes to avoid losing the significant investments that carriers have made in these airports . . .'' by ''[f]orcing airlines'' ''to make an unfair choice between operating empty aircraft, losing further resources in a distressed market and facing a longer road to recovery or abandoning the market and with it the investments it has made to operate in that market.''

Also consistent with IATA, A4A points to concerns about reciprocity from foreign jurisdictions that have indicated they only will provide relief to the extent it is provided to their carriers. A4A expresses concern that a ''lack of reciprocity will impair connectivity and therefore distort competition and alter passenger demand in the future.'' With respect to its reciprocity concerns, A4A reiterates its concerns about a sudden need to ramp-up operations given ''[a]irlines have put significant portions of their aircraft fleets in storage, permitted their employees to take voluntary furloughs, and reduced their winter schedules.'' This ramp up is expected to put ''strains on already diminished carrier resources'' and ''could also put more employees at risk of exposure to the virus as they return to airports and airplanes—without demand.'' Lastly, A4A asserts that ''[n]o data suggests that removing the waivers at Level 2 airports will generate demand, giving new entrants the opportunity to enter a struggling market and displace another carrier and its personnel that have invested substantially in the airport for the long-term.''

United opposes limiting the duration of relief at Level 2 airports to less than the full-season waiver that the FAA proposed for slot-controlled airports.[22] United contends that ''[r]elief for both [slot-controlled] and Level 2 airports should be synchronous, parallel, and

[20] IATA notes that according to TSA data, all three airports are down a total of 85.6% this summer compared to summer 2019 throughput and the New York City area has the second highest percentage reduction in scheduled flights in the total U.S. market for September (−74% versus September 2019). IATA reports that LAX, SFO, and ORD are facing similar challenges, with SFO down 85.6% in throughput over 2019, LAX down 80%, and ORD down 76%.

[21] A4A also points to TSA throughput data indicating a 75% decline in summer 2020 generally and a decline of 86 percent in the New York market.

[22] In addition to submitting comments for consideration in the public docket, United submitted additional materials marked as proprietary and confidential.

consistent through the full Winter 2020/2021 season.'' According to United, disparate treatment of Level 2 airports means that ''airlines serving Level 2 airports will be forced to take extreme actions in order to maintain their operational capability developed over decades at those airports.'' United asserts that the FAA's proposed Level 2 treatment ''fosters conditions that incentivize carriers to rush aircraft back into service'' and thereby ''introduces needless potential health and safety risks—both to frontline airline employees and the operation.'' United references investments at Level 2 airports that carriers would be trying to protect: ''Carriers have paid substantial rates, fees and charges, committed to signatory status, and worked collaboratively with Level 2 airports to improve gates, terminals, and other infrastructure. Carriers have established hubs at Level 2 airports.''

Regarding the prospect of losing priority at Level 2 airports, United observes that the ''consequences are severe for airlines, like United, that operate international hubs at Level 2 airports,'' and notes that ''United would be singularly affected'' because ''United has a hub at each of those airports, where it has contributed through rates, charges, and fees to improve facilities and built a robust international network.'' United notes that ''[b]ecause of reduced demand . . . United has already been particularly affected by the drop in international travel that has, in turn, exacerbated the drop in domestic travel'' and ''[i]f other airlines are able to establish priority for *ad hoc* operations, United will be blocked from reopening the passageways when the crisis abates.''

United comments that ''[a]s a matter of reasonable notice and fairness, airlines should have been provided more fulsome notice and time for public comments, and government should have afforded itself more time to consider the second- and third-order effects of a decision to change prioritization.'' United emphasizes that the current waiver in effect has not precluded carriers from seeking and gaining approval from the FAA for *ad hoc* use of temporarily available slots and movements. United also argues that the FAA's proposal would lead to ''perverse'' results and encourage ''manipulation,'' offering as an example that a major carrier operating at JFK or LGA would benefit from the waiver there, and could then commence *ad hoc* flights at EWR, moving its NYC area operations in a manner that secures priority at EWR while also preserving unoperated slots at JFK or LGA.

United views the distinction between the two levels, slot-controlled and Level 2, in the United States as based upon ''airspace management, airport capacity, and congestion and delay mitigation considerations rather than on competition.'' In addition, United references reciprocity concerns consistent with other commenters and notes that ''[o]ne of the foundational precepts of the original waiver was to ensure international reciprocity of relief,'' which ''calls into question whether full season waivers issued by other countries that are contingent on reciprocity will be withdrawn or similarly limited to grant only partial relief.'' United discusses ''the self-interest of carriers who rely on domestic business and thus have no concern about reciprocity or other second order effects that a split season and process changes will have on international networks.'' United further asserts that ''[a]t a minimum, the current waiver should remain in effect for two full scheduling seasons, Summer and Winter, so that the concept of corresponding seasons remains viable'' and to ensure stability. United also recommends that the FAA ''consult with carriers, slot coordinators, and IATA before altering international and industrial norms.''

Lastly, United acknowledges the existence of ''long-standing disputes'' about slot controls and schedule facilitation and how to balance the interests involved, but argues that the goal now should be ''preservation, not reconstruction,'' and that ''[t]he last time that government should tinker with airline markets and competition is during the most severe threat in history to the survival of the industry.'' United asserts that ''it is far too early to draw any conclusions about a 'new paradigm' '' and warns against ''the false assumption that the situation over the past six months signals permanent change to demand patterns'' rather than an ''artificial landscape (*i.e.,* an environment shaped by the effects of the pandemic and government restrictions).''

The oneworld Alliance urges the FAA ''to amend its proposal to provide relief at Level 2 airports for the full winter 2020/21 season, through 27 March 2021, to ensure equal treatment for operators at these airports and at [slot-controlled] airports, as well as other airports globally where waivers have been granted.''

Star Alliance urges the FAA to maintain consistency in its relief for Level 2 and slot-controlled airports, which would ''ensure global consistency in the non-discrimination of airports.'' Star Alliance asserts that continued and consistent relief is necessary to provide airlines certainty to forward-plan. In the absence of such relief, Star Alliance asserts that ''airlines will be forced to fly all their previously allocated movements, or forfeit them,'' connectivity for businesses and communities through Level 2 cities will be negatively impacted, and foreign airlines are likely to be disadvantaged by the U.S. not reciprocating the relief adopted by foreign jurisdictions.

Alaska generally supports the FAA's ''proposal to extend prioritization of flights cancelled at IATA Level 2 U.S. airports,'' but ''urges the FAA to apply the same duration of extension for Level 2 airports (to March 27, 2021) to align with the proposed extension date for JFK, DCA, and LGA.'' Alaska notes that it has ''sustained a high level of operations across [its] network'' throughout the pandemic, but that ''an extension of the existing waiver is necessary'' for ''flexibility to align scheduling with demand'' given the ''underlying purpose of an extension is the same regardless of whether an airport is categorized as Level 2 or [slot-controlled]'' and ''there is no reason to expect that demand at Level 2 airports will recover more quickly than at [slot-controlled] airports.''

The FAA received 33 comments from foreign air carriers, all of whom believe the FAA should extend the waiver for IATA Level 2 airports through the end of the Winter 2020/2021 scheduling season. A number of foreign air carriers express concern that ending relief at the Level 2 airports could hamper access to the U.S. market, slow the recovery of the international air market, and financially harm carriers trying to remain viable enterprises during COVID–19. Foreign air carriers believe that ending Level 2 relief would force them to sever and forfeit long-established international air connections between their respective countries and the United States or maintain such ties by operating at a tremendous financial loss. Carriers submitted information about forward bookings in their relevant markets. For example, Alitalia submits data showing that the U.S.-Italian passenger market continues to be depressed by more than 80 percent due to COVID–19 related impacts. Air France and KLM highlight that, ''our sector is suffering from an unprecedented crisis.'' Turkish Airlines notes that, ''[t]he industry remains in the deepest crisis it has ever experienced with little hope of any return to near normal levels of flying this winter season. The number of passengers carried by Turkish Airlines to the USA between July–August 2020

decreased by 73 percent compared to between July–August 2019, which is a severe example of the decrease in demand.'' [23]

The commenting foreign air carriers largely assert that the FAA's Level 2 proposal would force them to either operate flights at a large cost or potentially cede access to the United States market. Air Canada states that ''[t]he current FAA proposal goes against the international norms applied to [slot-controlled] and Level 2 airports. It cuts the Winter season into two halves, each with different rules and requirements, and introduces an entirely new, punitive structure that forces airlines to fly all their previously allocated movements or, apparently, forfeit them.'' Singapore Airlines calls the FAA's Level 2 proposal ''extremely concerning,'' and comments that, ''[w]hen we are on the path to recovery, it is extremely stressful if these slots we have been utilising [sic] in the Level 2 U.S. airports are no longer available to us. This will further slow down the rate of recovery and dampen our presence in the [United States] market.''

Foreign air carriers also emphasize in their comments that the FAA proposal for ending Level 2 relief on December 31, 2020 is not in alignment with policies at non-U.S. airports, which could cause reciprocity concerns for U.S. carriers. Deutsche Lufthansa writes that ''[f]or the U.S. Level 2 airports . . . we cannot accept the proposal to limit the extension only until December 31, 2020, basically splitting the winter season in half'' and observes that ''countries whose airlines are disadvantaged by this differential treatment in the U.S. might in return only grant waivers until December 31 for U.S. carriers operating to those countries on the principle of reciprocity.'' These carriers also note that most global aviation regulators and slot coordinators have granted relief at Level 2 airports for the entirety of the scheduling season.

Foreign air carriers also note difficulty planning to operate service starting January 1, 2020 in light of the timing of FAA's issuance of its proposed policy. Avianca, for example, comments that ''[t]he proposals for the US relief are coming very late in the planning for winter operations. We cannot simply have crew and fleet ready to operate again from January 1, 2021 without considerable costs and time to ensure all operating and safety aspects are duly prepared. Our schedule needs considerable operational and commercial review if we are to return to flying in January.''

A4E urges the FAA to ''reconsider its proposal and to provide alleviation at Level 2 airports for the full winter season . . . to ensure equal treatment for operators [at all slot-controlled and Level 2 airports] . . . and to ensure consistency with the full season waivers that have been planned or granted at other airports globally, including Europe.'' A4E notes that ''[w]ith the European Union (EU) set to introduce a waiver for the full winter season, European airlines may potentially face a difficult situation by the end of 2020, knowing that a slot at one end of the route is protected but could be lost at U.S. level 2 airports.''

As previously discussed, ALTA is ''concerned that the proposed [conditions] to the waiver will have undue negative impact on all carriers operating to U.S. [slot-controlled] and Level 2 airports and at the same time expose carriers to unfair reciprocal treatment regardless of which U.S. airport they operate from.'' ALTA therefore, urges the FAA to provide relief at Level 2 airports for the full winter season.

The Arab Air Carriers Organization also supports the comments of IATA ''urging the U.S. FAA to provide relief at Level 2 airports for the full winter season, through to March 27, 2021 to ensure equal treatment for operators at EWR, LAX, ORD and SFO to those at [slot-controlled] airports and the full season waivers granted at other airports globally.''

Twenty-two members of Congress [24] collectively submitted three comments advocating for an extension of the relief already provided at Level 2 airports through the Winter 2020/2021 season consistent with the proposal for extending relief at slot-controlled airports. These members of Congress express concern about the termination of relief at Level 2 airports and associated financial, labor, environmental, operational, and competitive impacts. Senator Booker notes that ''January is a known low-demand period for airlines and demand for air travel is expected to continue to hover around 40% compared to pre-COVID–19 levels,'' but an abrupt end to the relief already provided ''will result in many barely filled or empty airplanes being forced to fly.'' The Greater Houston area delegation comments that the proposal ''runs the risk of forcing carriers . . . to make dramatic scheduling changes at a time where certainty is desperately needed'' as a ''split season waiver makes it difficult for carriers to properly prepare a demand-driven schedule, and could impose significant financial and operational concerns on air carriers.'' The Illinois delegation sees ''no reason to treat Level 2 and [slot-controlled] airports separately—the COVID pandemic has impacted the aviation industry uniformly,'' and accordingly ''urge[s] the FAA to simply continue its equal treatment of congested airports in the [United States] until we are on the road to recovery.''

State and local officials from California and Illinois [25] similarly urge the FAA to continue equal treatment of congested airports in the United States ''until we are on the road to recovery.'' These officials advocate for a sustainable aviation recovery and the economic benefits that aviation brings to communities and workers [across] the U.S., which these officials assert depends on flexibility for carriers to match demand with capacity. These officials comment further that given COVID–19 impacts are the same for airlines operating to all airports, congested airports should be treated the same by the FAA. These officials also reference the likelihood that carriers ''will be forced to operate 'ghost flights' '' to retain slots and schedule approvals and emphasize that the U.S. would ''stand alone if it continues with this policy proposal,'' subjecting U.S. jobs and travelers to even greater risk and uncertainty.

The IAMAW and PAFCA–UAL submitted comments substantially similar to the comments submitted by the State and local officials. The Association of Flight Attendants-CWA also urges the FAA to maintain harmonization of the COVID–19 relief

[23] Turkish Airlines also submitted a substantially similar comment to the U.S. Department of State. That comment has been posted to the public docket for this proceeding.

[24] The twenty-two members of Congress who submitted comments include Senator Cory A. Booker, Senator Dick Durbin, Senator Tammy Duckworth, Representative Mike Quigley, Representative Darin LaHood, Representative Bobby L. Rush, Representative Raja Krishnamoorhi, Representative Mike Bost, Representative Rodney Davis, Representative Bill Foster, Representative John Shimkus, Representative Daniel W. Lipinski, Representative Adam Kinzinger, Representative Cheri Bustos, Representative Robin L. Kelly, Representative Danny K. Davis, Representative Bradley S. Schneider, Representative Jan Schakowsky, Representative Kevin Brady, Representative Dan Crenshaw, Representative Pete Olson, and Representative Randy Weber.

[25] These State and local officials from California and Illinois include State Controller Betty T. Yee, State Senator Jerry Hill, State Senator Shannon Grove, State Senator Patricia C. Bates, Assemblyman Vince Fong, Assemblyman and California Aviation Caucus Chair Jim Patterson, Los Angeles Councilmember Joe Buscaino, Governor JB Pritzker, State Senator Bill Brady, and State Representative Jim Durkin.

for Level 2 airports and slot-controlled airports in the United States through the end of the Winter 2020/2021 season. In support of its views, the Association states that ''the current FAA COVID–19 policy to treat congested airports equally . . . is the best way forward at this time'' and suggests that this approach can be re-evaluated and adjusted if needed, ''once we are on the path to recovery.''

The FAA received 54 comments from a diverse array of businesses and organizations, including Visa Inc., the United States Chamber of Commerce, the California Chamber, the Environmental Policy and Law Center, Oracle, and dozens of others. The majority of comments focused on advocating for an extension of the Level 2 waiver through the end of the Winter 2020/2021 scheduling season, with commenters iterating concerns about the economic and environmental effects of ending relief on December 31, 2020. Many of these organizations used similar phrasing to the effect that ''[o]ur ask is to simply treat Level 2 and [slot-controlled] airports the same, as the COVID 19 impacts to airlines operating to these airports are the same.'' The African American Chamber of Commerce of New Jersey contends that ''the FAA's proposal to provide disparate treatment to air carriers at Level 2 airports as compared to carriers at [slot-controlled] airports would address the pandemic-induced demand disruption by picking market winners and losers.'' Commenters assert that the proposed Level 2 policy would impose large costs on air carriers either through loss of market access or through increasingly unprofitable flying during COVID–19.

Visa Inc. writes that ''[r]ather than support an aviation recovery—and by extension a wider economic recovery—the FAA's policy proposals do the opposite,'' and asserts further that ''the proposed Notice . . . imposes severe consequences for an airline not flying its full allocation of movements.'' Commenters assert that the broader economic recovery from COVID–19 is going to depend in part on continued connectivity at U.S. Level 2 airports that serve as major domestic and international connection points. Stressing the importance of good air connectivity to their local and regional economy, the Illinois Chamber of Commerce comments that ''Chicago area businesses depend on the routine functioning of the aviation industry at O'Hare in order to survive and thrive,'' and states further that ''[a]s the economy continues to suffer the economic fallout of the pandemic, the Illinois business community cannot also bear a market distortion which results in a weakened carrier base at O'Hare.''

Many commenters also stressed the potential environmental and carbon impact of operating ''ghost flights'' to ''maintain slots.'' The Environmental Law and Policy Center comments that ''[u]ntil the minimum usage waiver was put in place last March, 'ghost flights' wasted fuel and contributed to climate change for the sole purpose of allowing airlines to retain slots at airports. The [initial] waiver was thus a sensible, common sense response to the unprecedented drop in travel demand caused by COVID–19.''

Travelers United disapproves of the FAA's proposal, arguing that ''[t]he free market should be allowed to function as the industry rebuilds itself over the next several years,'' that ''the existing slots waiver should not be extended,'' and that ''[i]f extended, the FAA should indicate that this will be the final extension.'' According to Travelers United, ''[t]he free market should be allowed to reallocate the use of these slots, which are actually owned by the public, to airlines that are willing to provide service for the benefit of the public.'' Travelers United contends that a ''free market will allow all airline consumers greater choices.''

In addition, 71 individuals commented on the FAA's proposed discontinuation of relief at Level 2 airports beyond December 31, 2020. Most of the individual commenters (69 in total) comment to the effect that the FAA should, ''extend through the end of the International Air Transport Association (IATA) 2020/2021 winter season the COVID–19 related policy that prioritizes flights canceled at IATA Level 2 airports in the [United States].'' Most of these 69 commenters are individual employees of United and their comments are substantially similar, though some comments reflect on how FAA policies could have an impact on an airline employee's career.

One individual commenter asserts that ''the proposed partial-season extension arbitrarily discriminates between the users of slot-controlled and Level 2 airports and will visit far more damage than benefit on the industry, with little or no offsetting benefit to the traveling public'' or to new entrant carriers, because incumbents will opt to fly mostly empty airplanes to keep priority. This individual also referenced international reciprocity concerns and the likelihood of foreign jurisdictions adopting partial season relief for U.S. carriers at both Level 2 and slot-controlled airports. This individual asserts that ''commercial aviation—so fundamental a prerequisite to that recovery—requires policy decisions predicated on stability and predictability,'' as ''[i]t makes little sense to base policy on calls to 'let the market function' when there is no functioning market.'' In addition, as previously noted, this commenter proposes that the FAA reconsider the return deadline and adopt a three to four week rolling deadline in lieu of the proposal.

Another individual commenter objects to the proposed relief from the minimum slot usage requirements. This commenter acknowledges that COVID–19 ''has certainly disadvantaged most of the legacy carriers and has lead [sic] to substantial downsizing in their fleets and workforce,'' but asserts that ''other carriers, such as Southwest Airlines, Frontier, Spirit, and Allegiant, have a different business model that will allow them a far quicker recovery.'' This commenter argues that ''[c]ontinuing to deny other carriers who may be capable of using these slots economically the right to claim these underutilized slots just promotes a monopoly that disadvantages taxpayers and customers.''

As previously discussed, Spirit opposes the FAA's proposal in its entirety. With regard to the FAA's Level 2 proposal, Spirit comments that the Level 2 designations at EWR, LAX, ORD, and SFO ''should end now given the low airport utilization and the minimum three-year expectation for recovery'' or ''[a]t an absolute minimum, FAA should eliminate the flight caps at EWR as irrelevant for the foreseeable future.'' Spirit asserts that if limits are needed again in the future ''FAA can consider first raising the caps'' to 2017 levels and ''if necessary and pursuant to statute, hold a scheduling conference to fairly allocate slots based on an assessment of pre-COVID operations, and operations over the two years preceding the need to reimpose the caps.'' Moreover, as discussed previously, Allegiant proposes an alternative process in lieu of a waiver for both slot-controlled and Level 2 airports, which would require updated schedules from incumbent airlines based on planned operations over a three to four month period for reallocation to non-incumbent carriers like Allegiant. Similarly, ''NACA recommends that the FAA should immediately end the Level 2 designation at ORD, EWR, LAX, and SFO in light of the historically low airport utilization and the legacy carriers' own forecasts that a return to pre-pandemic levels of passenger demand will take three years or more.''

As previously noted, some commenters seek to supersede the Level 2 policy proceeding entirely by encouraging the Federal Government to establish broader economic/market-based aviation industry recovery policies and/or change the regulatory policy landscape for managing slots and schedule facilitation in the United States.

Discussion of Relief for Slot Holders at U.S. Slot-Controlled Airports (DCA/JFK/LGA)

At the present time, COVID–19 continues to present a highly unusual and unpredictable condition that is beyond the control of carriers. As demonstrated in comments submitted by carriers as well as industry advocates, passenger demand has decreased dramatically as a result of COVID–19,[26] and is expected to remain as low as 40–50% of 2019 demand during the upcoming Winter 2020/2021 season, even as there are some signs of limited recovery in some markets and some restructuring of airline operations. The ultimate duration and severity of COVID–19 impacts on passenger demand in the United States and internationally remain unclear. Even after COVID–19 is contained, impacts on passenger demand are likely to continue for some time.

In its proposal, the FAA acknowledged the need for slot holders to have some flexibility in decision-making as the severe impacts of the COVID–19 public health emergency continue, but further noted that what starts as a highly unusual and unpredictable condition may eventually become foreseeable. Indeed, many airlines may well be on their way to restructuring their operations in response to a new, albeit volatile, environment. There may come a point in time at which ongoing waivers to preserve pre-COVID slot holdings could impede the ability of airports and airlines to provide services that may benefit the economy. The FAA acknowledged the interests of carriers with limited or no access to constrained airports in the United States and the interests of airports in serving their local community and rebounding from COVID–19. Further, the FAA agreed that any additional relief from the minimum slot usage requirements at U.S. slot-controlled airports should be tailored narrowly to afford increased access to carriers that are willing and able to operate at these airports, even if on an *ad hoc* basis until such time as slots revert to the FAA for reallocation under the governing rules and regulations at each slot-controlled airport.

Based on the comments received in this proceeding, the FAA has determined to make available to slot holders at DCA, JFK, and LGA a waiver from the minimum slot usage requirements due to continuing COVID–19 impacts through March 27, 2021, subject to each of the following revised and clarified conditions:

(1) All slots not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these slots on an *ad hoc* basis without historic precedence. Compliance with this condition is required for operations scheduled from November 12, 2020 through the rest of the Winter 2020/2021 season; therefore, carriers should begin notifying the FAA of returns on October 15, 2020. Slots for the period from October 28, 2020 through November 11, 2020 are not subject to this condition.[27]

(2) The waiver does not apply to slots newly allocated for initial use during the Winter 2020/2021 season. New allocations meeting minimum usage requirements would remain eligible for historic precedence. The waiver will not apply to historic in-kind slots within any 30-minute or 60-minute time period, as applicable, in which a carrier seeks and obtains a similar new allocation (*i.e.,* arrival or departure, air carrier or commuter, if applicable).

(3) The waiver does not apply to slots newly transferred on an uneven basis (*i.e.,* via one-way slot transaction/lease) after October 15, 2020, for the duration of the transfer. Slots transferred prior to this date may benefit from the waiver if all other conditions are met. Slots granted historic precedence for subsequent seasons based on this proposed relief would not be eligible for transfer if the slot holder ceases all operations at the airport.[28]

Additionally, an exception may be granted and the waiver therefore applied, if a government's official action (*e.g.,* travel prohibition or other restriction due to COVID–19), prevents the operation of a flight on a particular route that a carrier otherwise intended to operate. This exception will be administered by the FAA in coordination with the Office of the Secretary of Transportation (OST). This exception will apply under extraordinary circumstances only in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to an official governmental prohibition or restriction. A carrier seeking an exception may provide documentation demonstrating that the carrier qualifies for the requested exception. If documentation is not provided in support of a request for an exception, the FAA and OST will make a determination based on publicly available resources.

The FAA believes this final decision on further relief at slot-controlled airports for the Winter 2020/2021 season maintains a reasonable balancing of the various competing interests in an uncertain environment with ongoing COVID–19-related impacts and within the bounds of the current regulatory and policy landscape for slot management in the United States. The FAA believes this approach is appropriate to provide carriers with flexibility during this unprecedented situation, to support the long-term viability of carrier operations at slot-controlled airports while also supporting economic recovery, and to reduce the potential for a long-term waiver to suppress flight operations for which demand exists. The FAA also believes this decision is more consistent with the approach taken by other jurisdictions.

The FAA received a number of comments and requests for clarification on the proposed conditions and exception, including some general comments from carriers that the conditions are not strict enough, as well as others such as the comment from Southwest that the conditions placed on the relief are insufficient and ''largely impractical'' as they do not provide an adequate incentive or assurance for carriers like Southwest to invest in new service for short-term, *ad hoc* access to slot-controlled airports. Southwest states that, in the absence of a ''guarantee that Southwest would be able to use the reallocated slots *permanently,* an investment in new service would not be justified.'' Additional comments, clarifications, and changes to the conditions and exception are discussed below.

[26] Multiple carriers commented on decreased demand and financial losses. A4A commented that ''about one-third of the US fleet is parked'' and provided information on bookings on U.S. domestic flights and U.S. international flights for October 2020 through March 2021 as of August 2020 vs. August 2019. IATA provided similar information for the U.S. Level 2 and slot-controlled airports. As discussed earlier in this notice, A4A and IATA also provided information on TSA passenger screening data in 2020 compared to the same periods in 2019. The FAA notes that additional information on TSA passenger checkpoint throughput data for 2020 and 2019 is available at *https://www.tsa.gov/coronavirus/passenger-throughput.* A4A maintains additional information on COVID–19 related data at *https://www.airlines.org/dataset/impact-of-covid19-data-updates/#.*

[27] The usual process for treating slots as used for the Thanksgiving and Winter holiday periods provided by 14 CFR 93.227(l) of the High Density Rule and the JFK and LGA orders will still apply and will not be superseded by this decision.

[28] The FAA notes that this provision is not intended to apply to continuing long-term transfers that are already part of the operating environment pre-dating October 15, 2020.

Slot Return Deadline

The FAA is amending the return deadline to a simple, rolling four-week time period beginning October 15, 2020, for purposes of planned operations four weeks from that date on November 12, 2020. The four-week return period will not apply to slots for the period from October 28, 2020 through November 11, 2020. Usage will be waived for COVID–19 cancellations during this period consistent with the other conditions applied to the waiver.

The FAA notes that this condition is a minimum requirement for carriers to benefit from the waiver. However, the FAA strongly encourages carriers to return slots voluntarily as soon as possible and for as long a period as possible during the Winter 2020/2021 season so that other airlines able to add or increase operations on an *ad hoc* basis may do so with increased certainty. The FAA understands that there is a lag period between when schedule changes are submitted to the distribution systems and when schedules are made public.[29] To help inform future decisions, the FAA intends to monitor the results of the return deadline, including trends on how close to the deadline returns are made to the FAA and whether the returns are sufficient to meet demand for the following few weeks. Multiple industry groups and airlines, including a number of the largest operators at the Level 2 and slot-controlled airports, cited the impacts of COVID–19 on demand, their operations, and cash flow positions in support of the FAA granting a full season waiver at slot-controlled airports. Those supporting similar alleviation at Level 2 airports for the full season rather than through December 31, 2020, as the FAA proposed, cited the difficulties with adding significant new flights starting in January, even with three months or more notice. That suggests that some carriers have made decisions that at least some flights will not operate. The FAA believes carriers may often be in a position to well exceed the minimum four-week slot return deadline that the FAA is adopting.

The FAA recognizes that commenters including ACI World, ACI–NA, and PANYNJ support the return deadline as proposed. Furthermore, Allegiant, Spirit, and NACA oppose even the proposed return deadline as they contend that it disproportionately favors incumbent airlines and does not provide sufficient notice or certainty for carriers to add flights during the Winter 2020/2021 season; they propose alternative return processes for the full season to allow greater certainty of *ad hoc* operations for multiple months.

Nevertheless, the FAA is persuaded by comments supporting a shorter, rolling return period, while believing there remains a valid basis for making slots returned to the FAA available to other carriers for as long as possible consistent with the current slot management rules in effect. A4A, A4E, IATA, oneworld Alliance, Star Alliance, ALTA, and the Association of Asia Pacific Airlines supported a shorter period by which unused slots would need to be returned to qualify for a waiver. Likewise, many foreign and domestic air carriers supported a shorter, rolling deadline or endorsed comments filed by IATA. Experience has shown that, even in the absence of any return deadline in connection with the waiver the FAA provided during the Summer 2020 season, carriers still have flown *ad hoc* operations in unused slots; looking ahead to Winter 2020/2021, CAA specifically asks ''that the FAA make available unused slots for temporary reallocation to air cargo operations'' and states that ''the October-December timeframe is when [air cargo] demand will peak to the highest point in the year.'' Polar Air Cargo notes that ''all-cargo carriers like Polar benefit from the flexibility provided by these slot waivers to schedule extra-sections, as well as numerous charters, to make up for the lack of belly capacity caused by the suspension of the vast majority of flights by passenger carriers.''

As noted in comments, the FAA's change to the final return deadline condition as compared to the proposal is based on a number of factors including: (1) The occurrence of the return deadline varying from as little as four weeks to as much as eight weeks in advance based on when in the month the operation occurs, because of the proposal's use of a fixed return deadline rather than a rolling deadline; (2) the impracticality of a return deadline up to eight weeks in advance when demand and passenger bookings have been materializing much closer in time to the scheduled flight than that; (3) the divergence from other waivers already issued globally that range from no advance return deadline up to four weeks on a rolling basis; (4) the complications for reciprocal treatment of U.S. carriers at foreign airports and potential impacts to their operations or slot holdings; (5) the compliance issues for returning slots and receiving a waiver for slots in the last week of October and potentially the month of November depending on when the final FAA policy is issued; and (6) the reasonable expectation that this return deadline will in fact result in some level of *ad hoc* operations rather than inactivity. The FAA considered proposals for shorter rolling return deadlines, but believes four weeks strikes a reasonable balance to support the FAA's objective of allowing other interested carriers to operate unused slots on an *ad hoc* basis.

Newly Allocated Slots

The FAA proposed the waiver would not be made available for net newly-allocated slots eligible for historic precedence, based on allocation decisions made prior to the start of the Winter 2020/2021 scheduling season. IATA had included a similar condition in its recommendations for consideration globally, and IATA agrees that ''new slots allocated from the pool for the winter 2020 season must be operated according to normal 80/20 requirements, and therefore are not eligible for winter season waivers.''

IATA suggests, however, amending the proposed condition to include newly allocated slots regardless of the timing of the new allocation, and not limit the condition to allocation decisions made prior to the start of the season. Information submitted by Air New Zealand indicates newly allocated slots at New Zealand airports are not eligible for a Winter season waiver, without reference to whether the allocation was made prior to or after the start of the season. In Europe, A4E, IATA, Airports Council International-Europe, and the European Union Airport Coordinators Association reached voluntary agreement on conditions for Winter 2020/2021 providing that ''slots newly allocated and operated as a series may be considered for historic status only if they meet the 80% usage requirement.'' [30] Waivers granted for other foreign airports contain similar exclusions for newly allocated slots.

The FAA agrees that it is not necessary to make a distinction based on when a new slot allocation from the available slot pool is approved, and accordingly, the FAA is removing the reference in the condition that refers to allocation decisions made prior to the start of the Winter 2020/2021 scheduling season. In addition, the FAA

[29] The FAA encourages submission of cancellation as early as feasible and carriers are reminded that they may mark specific information as PROPIN, if applicable. Carriers should identify a date when the PROPIN limitation would no longer apply.

[30] *https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1645.*

clarifies that in considering net newly-allocated slots for the purposes of this condition, the FAA will review a carrier's historic slots in conjunction with any newly allocated slots for the Winter 2020/2021 season. The FAA does not intend for the waiver to apply for historic slots while a newly allocated slot in the same time period potentially meets minimum usage and qualifies for historic status. For example, the waiver would not apply to historic slots unused on the basis of COVID–19 if newly requested and FAA-allocated comparable slots (*e.g.,* arrival/departure, air carrier/commuter) or operating approvals are able to be operated in the same 30-minute or 60-minute time period, as applicable. Both the historic slots as well as the newly allocated slots in that time period would be excluded from the relief made available in this notice. The FAA also will closely review requests that could result in carriers obtaining relief in one time period while potentially gaining historic rights or priority through operations in another time period.

Slots Newly Transferred on an Uneven Basis

IATA requested clarification on this condition, specifically the statement that ''this provision is not intended to apply to continuing long-term transfers.'' The FAA received comments from a few airlines requesting clarification but without raising specific questions.

For the purposes of Condition 3, the FAA clarifies that it considers long-term transfers (*i.e.,* one-way slot transfers and leases that had previously been approved by the FAA for the Winter 2019/2020 or Summer 2020 scheduling seasons) to be a part of the established operating environment. Airlines seeking to transfer slots after October 15, 2020 will not be able to qualify for a waiver as to those slots under this condition. Carriers may still opt to engage in uneven transfers, but in doing so, would not be eligible for a waiver of the minimum usage requirement for the associated slots for the Winter 2020/2021 season. Carriers are reminded that they would still be required to request approval from the FAA for any transfers, consistent with applicable provisions in the FAA rules and Orders. In determining whether a proposed slot transfer would qualify as a long-term transfer for these purposes, the FAA will review prior approved transfers. In particular, the FAA would review the duration of prior season transfers relative to transfer requests for the Winter 2020/2021 scheduling season to see if the duration of the transfers is similar. For example, a one-week transfer in a prior season that is proposed for a full season transfer in Winter 2020/2021 would not be considered a long-term transfer that is already part of the operating environment. A prior transfer for a substantial portion, but not the full season, could be extended to the full Winter 2020/2021 season and meet this condition. Carriers would still need to meet the eligibility to hold slots and comply with transfer provisions in the FAA rules and Orders. Further, the FAA notes that it adopted a date certain for this condition to simplify the policy and align with the timeline for beginning compliance with the slot return condition.

Limited Exception Based on Specific COVID–19-Related Government Prohibitions or Restrictions

In the September 11, 2020, notice, the FAA proposed to apply each of the foregoing conditions in considering whether a slot-holding carrier has justification for a waiver based on the non-use of a slot due to COVID–19 impacts, subject to a limited exception. As proposed, this exception would have applied only under extraordinary circumstances in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to a governmental action directly restricting travel due to COVID–19.

The FAA is finalizing the exception largely as proposed, but is providing additional clarification based on comments received. IATA urges the FAA to provide clarification that ''travel restrictions'' and ''government action'' would ''include the various factors that may make a particular flight unsustainable, including but not limited to: Border or airport closures; Quarantine requirements; Load restrictions/passenger caps; and Onerous or economically infeasible testing protocols.'' IATA further urges the FAA ''to put in place a procedure to allow for this alleviation without unnecessary bureaucratic review and processing that would unnecessarily burden the slot coordinator and airlines.'' JetBlue requests a ''broad understanding of criteria for government mandated closure waivers.'' United asks for clarification on ''extraordinary circumstances,'' which it believes could include ''quarantines, travel constraints, border closures, testing requirements, limited airport hours, crew entry and rest exclusions, local curfews, caps on the number of arriving international passengers, and operating limitations.''

In the final text of the exception, the FAA made limited changes to clarify that: (1) The exception only would be considered based on evidence of an official prohibition or restriction issued by a governmental authority related to COVID–19 (such as a travel ban) that prevents a carrier from operating on a particular route at a particular date/time (consistent with the FAA's runway approval or authorized slot); (2) non-binding protocols, guidance, and other policies issued by any entity related to COVID–19 will not be considered to be a valid basis for an exception; and (3) a carrier's intent to operate will be evaluated for possible exception based upon several factors, including published schedules, carrier website information, flight cancelation information from flight plans or other FAA operational sources, carrier statements on operational plans or market restrictions, and information provided by airlines, airports, or other parties. If the exception is determined not to apply, carriers will be expected to meet the conditions of the waiver or operate consistent with applicable minimum slot usage requirements.

The FAA seeks to avoid a situation in which this exception swallows the rule; accordingly, the FAA does not agree with comments suggesting a broader expansion of the exception. The FAA believes that applying the exception as broadly as some commenters seem to anticipate would negate the underlying purpose of the conditions and would not adequately incentivize the timely return of unused slots or notification of canceled operations. The concern about unnecessary bureaucratic review and processing in administering this exception is mitigated by the intent that relief under this exception will be afforded sparingly rather than frequently. That said, articulation of specific categories of qualifying circumstances would unnecessarily restrain the flexibility that the exception is intended to provide.

Discussion of Relief for Operators at U.S. Designated IATA Level 2 Airports (EWR/LAX/ORD/SFO)

The FAA proposed to extend, through December 31, 2020, its COVID–19-related policy for prioritizing flights canceled at designated IATA Level 2 airports in the United States, including EWR, LAX, ORD, and SFO, for purposes of establishing a carrier's operational baseline in the initial months of the next corresponding season, also with additional conditions as described herein. This limited extension was proposed in recognition of the fact that the IATA Level 2 construct differs from

the rules and process in place at slot-controlled airports; the concepts of historic rights, series of slots, and minimum usage requirements do not exist under the Level 2 construct. As stated in the proposal, the FAA believes the voluntary, cooperative nature of Level 2 schedule facilitation is less amenable to continuing a policy that provides priority for flights that are not operated for extended periods of time while potentially denying access to carriers that are willing and able to add service.

Based on the comments received in this proceeding, the FAA has determined to extend through March 27, 2021, with conditions, its COVID–19-related policy for prioritizing flights canceled at designated IATA Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season.

The FAA additionally has determined to apply some conditions to carriers at Level 2 airports seeking relief and alleviation under this policy similar to the conditions finalized for carriers to benefit from the proposed relief at slot-controlled airports. Some minor adjustments have been made to reflect the different procedures, terminology, and regulatory requirements at slot-controlled airports that are not applicable at Level 2 airports. The conditions applicable to Level 2 airports are as follows:

(1) All schedules as initially submitted by carriers and approved by FAA and not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these times on an *ad hoc* basis without historic precedence. Compliance with this condition is required for operations scheduled from November 12 through the rest of the season; therefore, carriers should begin notifying FAA of returns or other schedule adjustments on October 15. Times for previously approved flights for the period from October 28, 2020 through November 11, 2020 are not subject to this condition.

(2) The priority for FAA schedules approved for Winter 2020/2021 does not apply to net-newly approved operations for initial use during the Winter 2020/2021 season. New approved times would remain eligible for priority consideration in Winter 2021/2022 if actually operated in Winter 2020/2021 according to established processes.

Consistent with the final decision for slot-controlled airports, the FAA will consider, in coordination with OST, limited exceptions from either or both of these conditions at Level 2 airports under extraordinary circumstances if a government's official action (*e.g.,* travel prohibition or other restriction due to COVID–19), prevents the operation of a flight on a particular route that a carrier otherwise intended to operate. This exception will apply under extraordinary circumstances only in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to an official governmental prohibition or restriction. A carrier seeking an exception may provide documentation demonstrating that the carrier qualifies for the requested exception. If documentation is not provided in support of a request for an exception, the FAA and OST will make a determination based on publicly available resources. If the exception is determined not to apply, carriers will be expected to meet the conditions for relief or operate consistent with standard expectations for the Level 2 environment.

The FAA has previously approved schedules by carriers for the Winter 2020/2021 scheduling season at Level 2 airports and carriers may choose to operate as approved, request application of this proposed policy subject to the stated conditions, or submit new schedule proposals for the season.

The FAA is persuaded by the overwhelming number of comments supporting an extension of relief for the full duration of the Winter 2020/2021 season ending March 27, 2021. The FAA agrees that the underlying cause and purpose of an extension is the same regardless of whether an airport is categorized as Level 2 or slot-controlled, and that there is no reason to expect that demand at Level 2 airports will recover more quickly than at slot-controlled airports. The FAA further acknowledges difficulties caused by the timing of its proposal issued September 11, 2020, in proximity to the start of the Winter 2020/2021 season on October 25, 2020. The FAA had anticipated that offering relief through December 31, 2020 would provide reasonably sufficient advance notice for carriers to make their plans relative to Level 2 airports thereafter, but comments reveal that is not the case under the circumstances here. The FAA also is mindful of unintended consequences for reciprocity—*i.e.,* the prospect that the shorter duration of relief at Level 2 U.S. airports as compared to what other jurisdictions have already offered could result in a corresponding shorter period of relief internationally for U.S. carriers at not only Level 2 but also slot-controlled airports.

The FAA further acknowledges practical concerns with, as proposed, establishing a distinct waiver duration at one airport in the New York City area, EWR, which could result in carriers leveraging the waiver at JFK or LGA to preserve slots at those airports while adding operations at EWR to attempt to gain priority there. The FAA has observed cases in Summer 2020 and requests for Winter 2020/2021 where airlines seek additional operations at EWR in hours that were previously at the scheduling limits while benefitting from a minimum usage waiver for slots held at JFK and LGA. While DOT and FAA are not seeking to interfere in competitive decisions by carriers on their operating airport if they have slots or approved schedules at more than one New York City area airport, neither is the purpose of this policy to countenance the potential for gaming that could be enabled by disparate treatment of New York City area airports.

As with its final decision regarding relief at slot-controlled airports, the FAA believes that this final decision on further relief at Level 2 airports for the Winter 2020/2021 season maintains a reasonable balance of the various competing interests in an uncertain environment with ongoing COVID–19-related impacts and within the bounds of the current regulatory and policy landscape for slot management in the United States. The FAA believes this approach is appropriate to provide carriers with flexibility during this unprecedented situation, to support the long-term viability of carrier operations at Level 2 airports while also supporting economic recovery, and to reduce the potential for long-term relief to suppress flight operations for which demand exists. The FAA also believes this decision is more consistent with the approach taken by other jurisdictions.

Regarding conditions on the relief at Level 2 airports, the FAA proposed a single condition imposing a return deadline similar to the condition proposed for slot-controlled airports. For the reasons stated above in discussing this condition at slot-controlled airports, at Level 2 airports, as well, the FAA strongly encourages carriers to return approved schedules voluntarily as soon as possible and for as long a period as possible during the Winter 2020/2021 season, and the FAA believes carriers may often be in a position to well exceed the minimum four-week return deadline that the FAA is adopting.

Given the extension of relief at Level 2 airports for the full season, and extensive comments advocating for parallel treatment of Level 2 and slot-controlled airports, the FAA determined to apply a second condition at Level 2

airports similar to the second condition that applies at slot-controlled airports.[31]

Discussion of Additional Issues Raised in Comments

Several parties commented on the duration and severity of COVID–19 impacts, with particular emphasis on the FAA's proposal to discontinue relief at Level 2 airports in the United States after December 31, 2020. The proposal reflected an attempt to balance the need for relief due to COVID–19 impacts of unprecedented magnitude with the FAA's mission to ensure access to the national airspace system to the greatest extent practicable. To strike this balance, the FAA stated that ''there may come a point in time in which ongoing waivers to preserve pre-COVID slot holdings could impede the ability of airports and airlines to provide services that may benefit the economy.'' Further, the proposal stated that while ''the FAA is proposing continued, albeit conditional, relief through the Winter 2020/2021 season, carriers should not assume that further relief on the basis of COVID–19 will be forthcoming beyond the end of the Winter 2020/2021 scheduling season.''

Comments reflected widely diverging views about the concept of ending waivers in the future and the appropriate timing for considering such action with respect to the ongoing COVID–19 public health emergency. Some parties strongly supported ending COVID–19 waivers soon—either before, during, or at the end of the Winter 2020/2021 season—and advocated broader regulatory and policy changes such as eliminating slot rules and/or Level 2 designations altogether. Other parties indicated that ongoing relief will be critical to the viability of operators at congested airports, and that FAA should keep an ''open mind'' on waiver petitions for the upcoming Summer 2021 season. Parties holding authorizations at congested airports indicated that, if waivers were to end in the demand environment currently projected for 2021, airlines would be forced to fly ''ghost'' flights to preserve their holdings in light of investments made in the airport facilities.

The FAA reiterates that operators should not assume that further relief on the basis of COVID–19 will be forthcoming beyond the end of the Winter 2020/2021 scheduling season. The FAA expects that this additional full-season extension of conditional relief will provide adequate notice and time for carriers at U.S. slot-controlled and Level 2 airports to make schedule decisions, market flights, and plan for aircraft utilization, crew, and facilities before a possible return to standard slot management and schedule facilitation processes might occur.

The FAA reserves judgment at this time with respect to any forthcoming petitions for additional relief. Rendering a decision for the Summer 2021 season or taking action to alter the established rules and policies for slot management and schedule facilitation in the United States is not within the scope of this action. Any future requests will be evaluated on their merits, based on the facts and circumstances available at that time and consistent with the established standard for considering waivers from minimum slot usage requirements.

Nothing in this decision binds the FAA to treat Level 2 and slot-controlled airports similarly in future decisions on slot usage and prioritization relief when a highly unusual and unpredictable condition occurs. The FAA continues to believe that while there may be practical similarities between Level 2 and slot-controlled airports, there remain fundamental regulatory differences between the two constructs that can justify differing relief.

Moreover, to the extent that some commenters seek to supersede this proceeding entirely by encouraging the Federal Government to establish broader economic/market-based aviation industry recovery policies and/or change the regulatory policy landscape for managing slots and schedule facilitation in the United States, such comments are deemed to be outside the scope of this proceeding.

Process for Administering Relief

Some comments requested information on the process to request, and for FAA to approve, available slots at slot-controlled airports or available schedule times at Level 2 airports. The FAA intends to follow existing procedures whereby carriers submit requests for new flight requests or changes to previously approved slots or flights to the FAA Slot Administration Office by email at *7-awa-slotadmin@faa.gov.* As noted earlier, the FAA expects that new allocations, approvals, and changes will be on an *ad hoc* basis only for the Winter 2020/2021 season, as much of the flexibility would be based on returns received under this waiver policy. Historic slot rights or priority at Level 2 airports would be retained by the original carrier provided the appropriate conditions are met. To facilitate the FAA temporarily reallocating capacity returned under this waiver policy in a timely and efficient manner, carriers should submit updated and accurate information to the FAA as quickly as possible so the FAA can make unused capacity available to other carriers.

Carriers should assume that new allocations in the Winter 2020/2021 season are granted without historic precedence eligibility, unless explicitly stated and discussed otherwise with the FAA Slot Administration Office. Carriers should clearly state if they are unwilling or unable to accept *ad hoc* allocations limited to Winter 2020/2021 only. Requests for historically eligible slots will continue to be evaluated and processed according to availability, per established FAA processes. Those processes include maintaining a list of carriers with outstanding requests so that they can potentially be met if slots or times subsequently become available.

Decision

The FAA has determined to extend through March 27, 2021 the COVID–19-related limited waiver of the minimum slot usage requirement at JFK, LGA, and DCA that the FAA has already made available through October 24, 2020, subject to additional conditions. Similarly, the FAA has determined to extend through March 27, 2021 its COVID–19-related policy for prioritizing flights canceled or otherwise not operated as originally intended at designated IATA Level 2 airports in the United States, subject to additional conditions, for purposes of establishing a carrier's operational baseline in the next corresponding season.

COVID–19 continues at this time to present a highly unusual and unpredictable condition that is beyond the control of carriers. The continuing impacts of COVID–19 on commercial aviation are dramatic and extraordinary, with a historic decrease in passenger demand. The ultimate duration and severity of COVID–19 impacts on passenger demand in the United States and internationally remain unclear. Even after the outbreak is contained, impacts on passenger demand are likely to continue for some time. The FAA has therefore concluded that an extension of relief through March 27, 2021, with conditions, is appropriate to provide

[31] Different from the policy for slot-controlled airports, for Level 2 airports, the FAA does not include a third condition relative to schedule times newly transferred on an uneven basis. There have been occasional transfers of approved times at EWR but not at other Level 2 airports and not during Winter 2019/2020 or Summer 2020. The FAA does not anticipate there would be a need to approve any transfers at Level 2 airports during the effective period of this policy, as the FAA would consider schedule adjustments on an *ad hoc* basis after reviewing available capacity. If any transfers are needed in Winter 2020/2021 for operational reasons, they would be for the season only and would not be subject to the priorities provided by this policy.

carriers with flexibility during this unprecedented situation and to support the long-term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States. In light of the evolving and extraordinary circumstances related to COVID–19 worldwide, continuing relief for this additional period on a conditional basis is reasonable to mitigate the impacts on demand for air travel resulting from the spread of COVID–19 worldwide.

While the FAA is providing continued, albeit conditional, relief through the Winter 2020/2021 season, carriers should not assume that further relief will be forthcoming beyond the end of the Winter 2020/2021 scheduling season. The FAA will review the facts and circumstances at the time of any future waiver requests; however, the FAA will also continue to consider the importance of providing access to the Nation's congested airports where there is capacity available. Slots are a scarce resource. Slot usage waivers accordingly are reserved for extraordinary circumstances. Even during an extraordinary period such as the COVID–19 public health emergency, carriers should utilize their slots and operating authorizations efficiently, in accordance with established rules and policy, or relinquish those slots and authorizations to the FAA so that other carriers willing and able to make use of them can do so. The FAA cautions all carriers against altering plans for usage at slot-controlled and Level 2 airports in reliance upon a presumption that additional relief will be forthcoming, which is a decision on which the FAA has not rendered a judgment at this time. The presumption that carriers should apply in preparing for operations in future scheduling seasons is compliance with standard slot management and schedule facilitation processes.

The FAA reiterates its expectation that foreign slot coordinators will provide reciprocal relief to U.S. carriers. To the extent that U.S. carriers fly to a foreign carrier's home jurisdiction and that home jurisdiction does not offer reciprocal relief to U.S. carriers, the FAA may determine not to grant a waiver to that foreign carrier. The FAA acknowledges that some foreign jurisdictions may opt to adopt more strict provisions in response to this policy than they had otherwise planned. However, as previously explained, the FAA believes the conditions associated with the relief provided in this policy are necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately tailored to reduce the potential for a long-term waiver to suppress flight operations for which demand exists. A foreign carrier seeking a waiver may wish to ensure that the responsible authority of the foreign carrier's home jurisdiction submits a statement by email to *ScheduleFiling@dot.gov* confirming reciprocal treatment of the slot holdings of U.S. carriers.

The FAA emphasizes that it strongly encourages carriers to return slots and approved schedules voluntarily as soon as possible and for as long a period as possible during the Winter 2020/2021 season, so that other airlines seeking operations on an *ad hoc* basis may do so with increased certainty. The rolling four-week return deadline is only a minimum requirement, and FAA anticipates that carriers may often be able to provide notice of cancellations significantly further in advance than four weeks. In both the Level 2 and slot-controlled environments, the FAA seeks the assistance of all carriers to continue to work with the FAA to ensure the national airspace system capacity is not underutilized during the COVID–19 public health emergency.

Carriers should advise the FAA Slot Administration Office of COVID–19-related cancellations and return the slots to the FAA by email to *7-awa-slotadmin@faa.gov* to obtain relief. The information provided should include the dates for which relief is requested, the flight number, origin/destination airport, scheduled time of operation, the slot identification number, as applicable, and supporting information demonstrating that flight cancelations directly relate to the COVID–19 public health emergency. Carriers providing insufficient information to identify clearly slots that will not be operated at DCA, JFK, or LGA will not be granted relief from the applicable minimum usage requirements. Carriers providing insufficient information to identify clearly changes or cancellations from previously approved schedules at EWR, LAX, ORD, or SFO will not be provided priority for future seasons.

Issued in Washington, DC, on October 2, 2020.

Arjun Garg,

Chief Counsel.

Timothy L. Arel,

Deputy Chief Operating Officer, Air Traffic Organization.

[FR Doc. 2020–22291 Filed 10–5–20; 4:15 pm]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice of Intent To Rule on a Release Request To Sell On-Airport Property Purchased With Airport Improvement Program (AIP) Funding and Remove It From Airport Dedicated Use at the Lehigh Valley International Airport (ABE), Allentown, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of release request to sell on-airport property purchased with AIP funding and remove it from dedicated use.

SUMMARY: The FAA is requesting public comment on the Lehigh-Northampton Airport Authority proposed land release and sale of 32.566 acres of on airport property at the Lehigh Valley International Airport in Hanover Township, Pennsylvania. The subject property was purchased with federal financial assistance under the Airport Improvement Program.

FAA grants affecting the parcels to be released are identified below.

1. Grant No. 3–42–0001–074–2008
2. Grant No. 3–42–0001–067–2006
3. Grant No. 3–42–0001–074–2008
4. Grant No. 3–42–0001–035–1998
5. Grant No. 3–42–0001–067–2006
6. Grant No. 3–42–0001–029–1996
7. Grant No. 3–42–0001–029–1996
8. Grant No. 3–42–0001–062–2005

DATES: Comments must be received on or before November 6, 2020.

ADDRESSES: Comments on this application may be emailed or delivered to the following address:

Thomas Stoudt, Manager, Lehigh Valley International Airport, 3311 Airport Road, Allentown, PA 18109, 610–266–6001

and at the FAA Harrisburg Airports District Office:

Rick Harner, Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, (717) 730–2830

FOR FURTHER INFORMATION CONTACT: Brian Gearhart, Project Manager, Harrisburg Airports District Office, location listed above.

The request to release airport property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION:

The following is a brief overview of the request:

The Lehigh-Northampton Airport Authority requests the release of a total of 32.566 acres of land previously required for future development that is

no longer needed. Of the total 32.566 acres, 5.705 acres are identified as Parcel V; 9.302 acres are from the 26.807-acre parcel known as N–2; 9.745 acres are from the 19.238-acre parcel known as K–3; 3.654 acres are from the 22.588-acre parcel known as K–4; and 4.169 acres are from the 63.731-acre Parcel X–2. The parcels were identified on the Airport Property Map—Exhibit A accepted July 15, 2015. The 32.566 acres is proposed for sale to The Rockefeller Group Development Corporation (Rockefeller Group), 500 International Drive North, Suite 345, Mt. Olive, NJ 07828. As shown on the Airport Layout Plan, the property is not needed now or in the future for airport development. The Federal share of the proceeds of the sale will be distributed towards approved AIP eligible efforts, with the remaining proceeds to be utilized to operate the airport.

Any person may inspect the request by appointment at the FAA office address listed above.

Interested persons are invited to comment on the proposed release. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, September 28, 2020.

Rick Harner,

Manager, Harrisburg Airports District Office.

[FR Doc. 2020–22101 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0078]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on September 21, 2020, Union Pacific Railroad Company (UPRR) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2020–0078.

Applicant: Union Pacific Railroad Company, Mr. Neal Hathaway, A.V.P.—Signal Maintenance & Construction, 1400 Douglas Street, MS/RM 0910, Omaha, NE 68179

Specifically, UPRR requests permission to re-classify a portion of Main Track #2 from yard limits (YL)/automatic block system (ABS) to YL, between milepost (MP) 2.6 and MP 4.7, allowing the remote control locomotive (RCL) pullback on Main Track #2 to be extended through Grand Avenue at Milwaukee Subdivision (Proviso Yard 9) located in Proviso, Illinois.

UPRR states that extending YL on Main Track #2 will allow Operating Practices to pull longer cuts out of the yard, which will in turn help with congestion and conflict in the yard. RCL Operations would end a minimum of 290 feet from the track feed for the signal at MP 4.7 on Main Track #2.

The current configuration of the 2WT track circuit and the Main Track Crossover between the current end of ABS Limits and MP 4.7 will not change with this application.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 23, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–22204 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0075]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on September 15, 2020, Southern California Regional Rail Authority (SCRRA) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229, Railroad Locomotive Safety Standards; 49 CFR part 231, Railroad Safety Appliance Standards; and 49 CFR part 238, Passenger Equipment Safety Standards. FRA assigned the petition Docket Number FRA–2020–0075.

Specifically, SCRRA is requesting relief from portions of 49 CFR 229.47(b), *Emergency brake valve;* 231.14(a)(2), (b)–(d), (f), (g), *Passenger-train cars without end platforms;* and 238.305(c)(5), *Interior calendar day mechanical inspection of passenger cars,* for three new Fast Light Intercity and Regional Train (FLIRT) Diesel Multiple Unit (DMU) railcars manufactured by Stadler US.

The new FLIRT DMU railcars are to undergo pre-revenue service testing on the SCRRA system and be used in revenue service on an extension of the SCRRA San Bernardino line known as the Redlands Passenger Rail Project (RPRP). The RPRP is a 9-mile rail corridor owned by the San Bernardino County Transportation Authority (SBCTA). Before the start of revenue service, SBCTA will transfer track responsibility and vehicle ownership to SCRRA. The RPRP will have five station stops beginning at the San Bernardino—Downtown station and ending at the Redlands—University station.

SCRRA asserts that the FLIRT trainset is a service-proven design based on

European standards. It further states that the design features subject to this request are identical to those on FLIRT vehicles in service at TexRail in Fort Worth, Texas. SCRRA believes that the design characteristics of the Stadler FLIRT vehicles provide an equivalent or higher level of safety and security to the passengers and crew.

SCRRA also requests that FRA exercise its authority under 49 U.S.C. 20306 to exempt SCRRA from certain statutory provisions of 49 U.S.C. Chapter 203, because the FLIRT DMU vehicles will be equipped with their own array of safety devices resulting in equivalent safety.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 23, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–22203 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0081]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on September 23, 2020, Canadian National Railway Company (CN) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices. FRA assigned the petition Docket Number FRA–2020–0081.

CN seeks relief from the requirements of 49 CFR 232.219 regarding the Class III airbrake test for helper locomotives equipped with the ''Helperlink'' system. Specifically, CN requests relief on trains with one or more distributed power (DP) locomotives on the rear in helper operations without cutting in the brake pipe to the helper locomotive.

CN explains that the operation of trains over Steelton Hill, and intermittently on Hawthorne Hill, near Superior, Wisconsin, as well as Byron Hill, near Fond-Du-Lac, Wisconsin, require the use of helper locomotives. CN currently shoves with conventional helper locomotives and cannot utilize the ''Helperlink'' technology due to a lack of an End-of-Train Telemetry Device on many trains with DP at the rear the train. The number of trains with this configuration, particularly in the bulk product category, has been steadily increasing over the past few years.

CN contends ''Helperlink'' technology will help to eliminate unnecessary risks to transportation employees in helper service, as CN helper service employees could couple and uncouple from trains being assisted over grade from the rear without cutting in train-line air, eliminating going between rolling equipment twice per train assisted. The waiver would reduce (1) the amount of mounting and dismounting equipment an employee does during their shift, and (2) related slip/trip/fall incidents from occurring. Additionally, CN states relieving train crews from stopping their trains at the top of mountain grades to cut away helpers will improve the overall train handling scenario and reduce the potential for in-train mechanical failures related to having to start and stop trains on varying degrees of grade.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 23, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records

notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–22205 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0128]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LIBECCIO (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 6, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0128 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0128 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0128, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LIBECCIO is:

—*Intended commercial use of vessel:* ''High-end Multi-day Luxury charter operations with an emphasis on inter island and blue water itineraries to capitalize on the unique sailing capabilities of of the vessel.''

—*Geographic region including base of operations:* ''Hawaii'' (Base of Operations: Honolulu, HI).

—*Vessel length and type:* 64.6′ Sailing Catamaran.

The complete application is available for review identified in the DOT docket as MARAD–2020–0128 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES.** Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov*, keyword search MARAD–2020–0128 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

* * * * *

Dated: October 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–22134 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0132]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel WAVE SWEEPER (Auxiliary Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 6, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0132 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0132 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0132, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WAVE SWEEPER is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Day trips along the coast of Maine.''
—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Maine'' (Base of Operations: Portland, ME)
—VESSEL LENGTH AND TYPE: 36.3′ Auxiliary Sail

The complete application is available for review identified in the DOT docket as MARAD–2020–0132 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0132 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: October 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–22137 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0130]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel NEW ADVENTURE (Sailing Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is

authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 6, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0130 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0130 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0130, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NEW ADVENTURE is:

—INTENDED COMMERCIAL USE OF VESSEL: ''sailing charter''
—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Illinois, Wisconsin, Michigan'' (Base of Operations: Chicago, IL)
—VESSEL LENGTH AND TYPE: 34′ Sailing Vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0130 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES.** Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov*, keyword search MARAD–2020–0130 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: October 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–22133 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0129]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TRAVELLER (Sailing Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 6, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0129 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0129 and follow the instructions for submitting comments.

• *Mail or Hand Delivery*: Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0129, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TRAVELLER is:

—INTENDED COMMERCIAL USE OF VESSEL: ''sailing charter''
—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Florida, Georgia'' (Base of Operations: St. Simons Island, GA)
—VESSEL LENGTH AND TYPE: 42′ Sailing Vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0129 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov*, keyword search MARAD–2020–0129 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: October 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–22136 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0131]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ROAD NOT TAKEN (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 6, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0131 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0131 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0131, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ROAD NOT TAKEN is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Carriage of no more than 12 Passengers. No Cargo, No Commercial Fishing, towing, dredging or salvage.''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Maine, New Hampshire, Rhode Island, Connecticut, New York (excluding NY Harbor), New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Eastern Florida, Alaska (excluding Southeast Alaska), California, Hawaii, Oregon, Washington.'' (Base of Operations: Fort Lauderdale, FL)

—VESSEL LENGTH AND TYPE: 86′ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD–2020–0131 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0131 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: October 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–22135 Filed 10–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on the Readjustment of Veterans will meet virtually and conduct virtual site visits to: Princeton, WV Vet Center and Tulsa, OK Vet Center. The meetings will begin and end as follows:

Date	Time	Open session
October 20, 2020	1:00 p.m. to 3:00 p.m. EST	No.
October 20, 2020	3:00 p.m. to 5:00 p.m. EST	Yes.
October 21, 2020	1:00 p.m. to 3:00 p.m. EST	No.
October 21, 2020	3:00 p.m. to 5:00 p.m. EST	Yes.

Sessions are open to the public, except when the Committee is conducting tours of VA facilities. Tours of VA facilities are closed, to protect Veterans' privacy and personal information.

The purpose of the Committee is to advise the Department of Veterans Affairs (VA) regarding the provision by

VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into account the needs of Veterans who served in combat theaters of operation. The Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment.

The Committee, comprised of 12 subject matter experts, advises the Secretary, through the VA Readjustment Counseling Service, on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment, specifically taking into account the needs of Veterans who served in combat theaters of operation.

On October 20, 2020, the agenda will include a virtual site visit of the Princeton, WV Vet Center, this field visit on 10/20/2020, from 1:00 p.m.–3:00 p.m., is closed to the public in accordance with 5 U.S.C. 552b (c) (6). Exemption 6 permits the Committee to close a meeting that is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, which will most likely be the case throughout this field visit. At 3:00 p.m., the Committee will reconvene an open meeting which will include: A review of a proposition for establishment of a subcommittee, an overview presentation of the Office of Tribal Government Relations by Stephanie Birdwell, and a period of open discussion amongst committee members. For public members wishing to join the meeting, please use the following Webex link: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m42755e624be71029cf6717ab861366ad,* Meeting Password: NQquwuN4@66 and to join via phone dial 1+ (404) 397–1596, Access Code: 199 619 7692.

On October 21, 2020, the agenda will include a virtual site visit of the Tulsa, OK Vet Center, this field visit on 10/21/2020 from 1:00 p.m.–3:00 p.m., is closed to the public in accordance with 5 U.S.C. 552b (c) (6). Exemption 6 permits the Committee to close a meeting that is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, which will most likely be the case throughout this field visit. At 3:00 p.m., the Committee will reconvene an open meeting which will include: An overview of the Medical Legal Partnership program by Lara Eilhardt from the VA Office of General Counsel from 3:10 p.m.–4:00 p.m. For public members wishing to join the meeting, please use the following Webex link: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=mbf925dd817202b77fa521f4fc10cd1cc,* Meeting Password: 8UiCrY7u9q@ and to join by phone dial 1+ (404) 397–1596, Access Code: 199 510 7305.

No time will be allotted for receiving oral comments from the public; however, the committee will accept written comments from interested parties on issues outlined in the meeting agenda or other issues regarding the readjustment of Veterans. Parties should contact Ms. Sherry Moravy, via email at *VHA10RCSAction@va.gov,* or by mail at Department of Veterans Affairs, Readjustment Counseling Service (10RCS), 810 Vermont Avenue Washington, DC 20420. Any member of the public seeking additional information should contact Ms. Moravy at the phone number or email addressed noted above.

Dated: October 1, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–22072 Filed 10–6–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Certification of Implementation of the Caregiver Records Management Application (CARMA)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing that, in accordance with the requirements of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018 (MISSION Act), the Caregiver Records Management Application, or CARMA, and its integration with other related Veterans Health Administration Information Technology (IT) systems can now effectively manage and monitor the expansion of the Program of Comprehensive Assistance for Family Caregivers (PCAFC). On October 1, 2020, the Secretary of Veterans Affairs submitted to Congress a certification that VA has fully implemented the IT system required by the MISSION Act. This certification marks a major milestone in VA's implementation of the MISSION Act, enabling the Department to begin the first phase of PCAFC expansion to eligible Veterans who served prior to September 11, 2001.

DATES: This notice is effective on October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Alice Boone, Caregiver Support Program, Care Management and Social Work (10P4C), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–6780. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 6, 2018, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018 (MISSION Act), Public Law 115–182, was signed into law. Section 162(d)(3) of Public Law 115–182 required VA to report no later than October 1, 2019, on the implementation of subsections (a) through (c) of section 162. On October 7, 2019, VA informed House and Senate Committees on Veterans' Affairs and Appropriations that VA was unable to comply with the reporting requirement in section 162(d)(3) but was working diligently to implement an IT system that fully supports PCAFC and allows for data assessment and comprehensive monitoring of PCAFC. On October 1, 2020, the Secretary of Veterans Affairs submitted to Congress a certification that VA has fully implemented the IT system required by section 162(a) of the MISSION Act. VA will assess, monitor and modify PCAFC (as necessary), as required by section 162(b) and (c) of the MISSION Act and provide a final report to Congressional leaders by spring 2021.

This certification marks a major milestone in VA's implementation of the MISSION Act, enabling the Department to begin the first phase of PCAFC expansion to eligible Veterans who served prior to September 11, 2001. Pursuant to 38 U.S.C. 1720G(a)(2)(B)(ii), effective October 1, 2020, PCAFC eligibility was expanded to include eligible Veterans who incurred or aggravated a serious injury in the line of duty in the active military, naval or air service on or before May 7, 1975. Pursuant to 38 U.S.C. 1720G(a)(2)(B)(iii), effective October 1, 2022, PCAFC eligibility will be expanded to include eligible Veterans who incurred or aggravated a serious injury in the line of duty in the active

military, naval or air service after May 7, 1975, and before September 11, 2001.

VA's Final Rule, PCAFC Improvements and Amendments under the VA MISSION Act of 2018, 85 FR 46226 (July 31, 2020), makes improvements to PCAFC and updates 38 CFR, part 71, to comply with the MISSION Act. The Final Rule, effective October 1, 2020, includes references to the date of the certification required by 38 U.S.C. 1720G(a)(2)(B)(i) in 38 CFR 71.20(a)(2)(ii) and (iii) and 71.25(a)(3)(ii)(A) and (B). For purposes of 38 CFR 71.20(a)(2)(ii) and (iii), effective October 1, 2020, the ''date specified in a future **Federal Register** document'' is October 1, 2020. For purposes of 38 CFR 71.25(a)(3)(ii)(A) and (B), effective October 1, 2020, the ''date published in a future **Federal Register** document'' is October 1, 2020.

Signing Authority

The Secretary of Veterans Affairs, or designee, 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. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on October 1, 2020 for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2020–22093 Filed 10–6–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Wednesday,
No. 195 October 7, 2020

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 213
Rail Integrity and Track Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA–2018–0104, Notice No. 2]

RIN 2130–AC53

Rail Integrity and Track Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is revising its regulations governing the minimum safety requirements for railroad track. The changes include allowing inspection of rail using continuous rail testing; allowing the use of flange-bearing frogs in crossing diamonds; relaxing the guard check gage limits on heavy-point frogs used in Class 5 track; removing an inspection-method exception for high-density commuter lines; and other miscellaneous revisions. Overall, the revisions will benefit track owners, railroads, and the public by reducing unnecessary costs and incentivizing innovation, while improving rail safety.

DATES: This final rule is effective October 7, 2020 in accordance with 5 U.S.C. 553(d)(1).

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time.

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I. Executive Summary

Beginning in 2015, the Track Safety Standards Working Group (TSS Working Group) of the Railroad Safety Advisory Committee (RSAC) met numerous times to ''consider specific improvements to the Track Safety Standards . . . designed to enhance rail safety by improving track inspection methods, frequency, and documentation.'' On December 31, 2019, FRA published a Notice of Proposed Rulemaking (NPRM) that was informed by the RSAC's recommendations and FRA's own review and analysis of the Track Safety Standards (TSS or Standards) (49 CFR part 213). *See* 84 FR 72526. In the NPRM, FRA proposed to amend subparts A, D, F, and G of the TSS to: (1) Allow for continuous rail testing, (2) incorporate longstanding waivers related to track frogs,[1] (3) remove the exception for high-density commuter lines from certain track inspection method requirements, and (4) incorporate several consensus-based, RSAC recommendations. For a more in-depth discussion of the proposals and their development, please see the NPRM (84 FR 72526).

FRA analyzed the economic impact of this rule over a 10-year period and estimated its costs and cost savings. If railroad track owners choose to take advantage of the cost savings from this rule, they will incur additional labor costs associated with continuous rail testing. These costs are voluntary because railroad track owners will only incur them if they choose to operate continuous rail testing vehicles. The following table shows the net cost savings of this rule, over the 10-year analysis.

NET COST SAVINGS, IN MILLIONS

[2019 Dollars]

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Costs	$27.44	$33.24	$3.91	$3.90
Cost Savings	149.30	180.99	21.26	21.22
Net Cost Savings	121.86	147.75	17.35	17.32

This rule will result in cost savings for railroad track owners. The cost savings are in the table below.

COST SAVINGS, IN MILLIONS

[Over a 10-year period of analysis]

Section	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Government Cost Savings	$0.194	$0.229	$0.028	$0.027
Flange Bearing Frog Inspections	0.184	0.215	0.026	0.025
Frog Waiver Savings	0.013	0.016	0.002	0.002

[1] A frog is a track component used at the intersection of two running rails to provide support for wheels and passage for their flanges, thus permitting wheels on either rail to cross the other intersecting rail.

COST SAVINGS, IN MILLIONS—Continued

[Over a 10-year period of analysis]

Section	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Continuous Testing Labor Cost Savings	7.452	9.034	1.061	1.059
Slow Orders	141.329	171.340	20.122	20.086
Continuous Testing Waiver Savings	0.132	0.157	0.019	0.018
Total	149.305	180.991	21.258	21.218

The table below presents the estimated costs, over the 10-year analysis.

ESTIMATED COSTS, IN MILLIONS

[Over a 10-year period of analysis]

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Continuous Testing	$27.4	$33.2	$3.9	$3.9

II. Rulemaking Authority and Background

On January 30, 2017, President Trump issued Executive Order (E.O.) 13771. E.O. 13771 seeks to ''manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations'' and directs each executive department or agency to identify for elimination two existing regulations for every new regulation issued. E.O. 13771 also requires any new incremental cost associated with a new regulation, to the extent permitted by law, be at least offset by the elimination of existing costs associated with at least two prior regulations.

In response to E.O. 13771, FRA initiated a review of its existing regulations with the goal of identifying regulations that it could amend or eliminate to reduce the overall regulatory, paperwork, and cost burden on entities subject to FRA jurisdiction. FRA identified part 213 as a regulation FRA could amend and thereby reduce the railroad industry's overall regulatory and cost burden while improving rail safety. Also, in response to a DOT request for public comment on existing rules ripe for repeal or modification, the Association of American Railroads and other industry participants encouraged FRA to revise part 213 to allow for the use of innovations in rail inspection technology, specifically the use of non-stop rail inspection vehicles. *See* docket number DOT–OST–2017–0069 (available online at *www.regulations.gov*). This rule responds to those comments by providing railroads with the flexibility to use continuous rail testing in a way that will facilitate operational efficiency and enhance safety.

Section 20103 of title 49 of the United States Code (U.S.C.) provides that, ''[t]he Secretary of Transportation, shall prescribe regulations and issue orders for every area of railroad safety.'' This statutory section codifies the authority granted to the Secretary of Transportation under the former Federal Railroad Safety Act of 1970. The Secretary's authority to act under section 20103 is delegated to the Federal Railroad Administrator. *See* 49 CFR 1.89.

FRA published the first Standards on October 20, 1971. The most comprehensive revision of the Standards resulted from the Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (Sept. 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (Nov. 2, 1994), which led to FRA issuing a final rule amending the Standards in 1998. *See* 63 FR 34029, June 22, 1998; 63 FR 54078, Oct. 8, 1998.

As noted in the NPRM, this final rule is based, in part, on the consensus recommendations of the TSS Working Group. Specifically, this final rule implements the TSS Working Group's recommendations to remove the high-density commuter line inspection-method exception and to revise certain recordkeeping requirements and the qualification requirements for certain railroad employees.

III. Summary of Major Provisions of the Final Rule

A. Continuous Rail Testing

FRA sponsors railroad safety research, including research on rail integrity. The general objectives of FRA rail integrity research have been to improve railroad safety by reducing rail failures and the associated risks of train derailment, and to do so more efficiently through maintenance practices that increase rail service life. Generally, FRA's rail integrity research focuses on four distinct areas: Analysis of rail defects; residual stresses in rail; strategies for rail testing; and other related issues (*e.g.,* advances in nondestructive inspection techniques; feasibility of advanced materials for rail, rail lubrication, rail grinding and wear; etc.). FRA's rail integrity research is an ongoing effort, and is particularly important as annual tonnages and average axle loads continue to increase on the nation's railroads. For more discussion of rail integrity generally, see FRA's 2014 final rule titled Track Safety Standards; Improving Rail Integrity. 79 FR 4234, Jan. 24, 2014.

One of the most important assets to the railroad industry is its rail infrastructure. Historically, a primary concern of railroads has been the probability of rail flaw development. Rail defects may take many forms (*e.g.,* rail head surface conditions and internal rail flaws). If defects go undetected, they may grow to critical size, potentially resulting in a broken rail and subsequent derailment. Accordingly, to prevent rail defect development, railroads seek ways to improve their rail

maintenance practices, install more wear-resistant rail, utilize improved flaw-detection technologies, and increase rail inspection frequencies.

The development of internal rail defects is an inevitable consequence of the accumulation and effects of fatigue under repeated loading. The direct cost of an undetected rail defect that leads to a rail failure is the cost of replacing the rail plus the cost of any damage and other consequences that may result from the failure. Rail failures can have widespread and catastrophic consequences (*e.g.,* environmental damage and potential injury and loss of life, along with significant service interruptions, and traffic rerouting). As such, the cost of a rail failure is typically considerably more than the cost of replacing the rail containing the defect before the rail actually fails. The challenge for the railroad industry is to avoid the occurrence of rail failures due to the presence of undetected defects.

The effectiveness of a rail inspection program depends, in part, on the test equipment being properly designed and capable of detecting rail defects of a certain size and orientation reliably, and on ensuring that the test frequencies allow for detection of defects before they grow to critical size. High traffic and tonnage volumes can accelerate defect growth, while at the same time decreasing the time available for rail inspection. Additionally, these high volumes can lead to rail surface fatigue that may impede the ability of test equipment to detect an underlying rail flaw.

Currently, track owners use four general rail flaw detection methods, each of which requires human involvement to interpret the test data. The four methods are:

- Portable test process, which consists of an operator pushing a test device over the rail at a walking pace while visually interpreting the test data;
- Stop-and-verify process, where a vehicle-based flaw detection system tests at a slow speed (normally not exceeding 20 miles per hour (m.p.h.)), gathering data that is presented to the operator on a test monitor for interpretation and field verification;
- Chase car process, which consists of a lead test vehicle performing the flaw detection process ahead of a verification chase car; and
- Continuous test process, which is one of the subjects addressed in this final rule, where a high-speed, vehicle-based, test system runs non-stop along a designated route, the test data is analysed at a centralized location, and suspect defect locations are subsequently verified.

The main technologies utilized for the processes listed above are ultrasonic and induction methods. Ultrasonic technology is the primary technology used, with induction technology currently used as a complementary system. As with any non-destructive test method, these technologies are susceptible to physical limitations that allow poor rail head surface conditions (*e.g.,* shelling or corrugation) to impair the detection of rail flaws. Conditions, other than poor rail head surface conditions (*e.g.,* heavy lubrication or debris on the rail head), can also limit the effectiveness of certain inspection technologies.

Induction testing introduces a high-level, direct current into the top of the rail, establishing a magnetic field around the rail head. An induction sensor unit is then passed through the magnetic field. The presence of a rail flaw distorts the current flow and the magnetic field, and it is this distortion that is detected by the search unit.

Ultrasonic testing uses sound waves that propagate at a frequency that is normally between 2.25 MHz (million cycles per second) to 5.0 MHz, above the range of human hearing. Ultrasonic waves are transmitted into the rail by transducers placed at various angles with respect to the rail surface. The ultrasonic waves produced by these transducers normally scan the entire rail head and web, as well as the portion of the base directly beneath the web. Internal rail defects are discontinuities in the material that constitutes the rail. These discontinuities act as a reflector to the ultrasonic waves, a portion of which are reflected back to the transducers. These conditions include rail head surface conditions, internal and visible rail flaws, weld upset/finish, and known reflectors within the rail geometry such as drillings or rail ends. The information is then processed by the test system and recorded in the test data record.

FRA is amending its regulations on inspection of rail and verification of indications of defective rail to allow for continuous rail testing. *See* § 213.240. The current regulations require immediate verification of certain indications and require all others be verified within 4 hours. 49 CFR 213.113(b). This verification timeframe has made it practically impossible for track owners to conduct continuous testing. Consistent with FRA's desire to improve rail safety and encourage innovation that does the same, this rulemaking establishes procedures that, except for indications of a broken rail, extend the required verification timeframes for those entities that adopt continuous testing. FRA expects this will facilitate operational efficiency and encourage both a broader scope and more frequent use of continuous rail testing in the industry.

Although rail flaw detection is not an exact science, noncritical rail flaw limits can be difficult to estimate, and numerous variables affect rail flaw growth, FRA expects the procedures adopted in this final rule are sufficient to ensure the extended verification timeframes are unlikely to result in complete rail failure prior to verification. Continuous rail testing is a process that has been successfully trialed under the waiver process outlined in 49 CFR 213.17 on select rail segments on multiple railroads in the U.S. since 2009.[2] This rulemaking codifies the continuous rail testing practices FRA has permitted by waiver and allows for additional flexibility in the rail inspection process. Track owners that do not desire to conduct continuous rail testing are not required to do so.

As explained in detail in the NPRM, the continuous rail test method consists of a vehicle using ultrasonic testing, in some cases augmented by other flaw detection systems, to detect defects in the rail. The raw test data is transmitted from the vehicle to a centralized location to be analyzed by a team of experts, using multiple advanced techniques, including comparison to past data from the same location (sometimes referred to as ''change detection''). Once analyzed, suspect locations or ''indications'' (locations where the data indicates the possible presence of a rail defect) are then transmitted back to the field for on-site verification to determine if an actual rail flaw exists.

Under § 213.113(b), when a track owner learns that a rail contains an indication of one of the defects listed in the Remedial Action Table, the track owner must field-verify the indication within four hours. As proposed, § 213.240 would exempt track owners who elect to utilize continuous rail testing from the requirement to field-verify indications within four hours. Depending on the type and severity of an indication, as proposed § 213.240 would allow railroads up to either 36 or 84 hours to field-verify the suspect locations. (Once a suspect location is verified as a defect, however, the

[2] *See* docket numbers FRA–2008–0111 (CSX), FRA–2011–0107 (CSX), FRA–2014–0029 (CN), FRA–2015–0019 (NS), FRA–2015–0115 (KCS), FRA–2015–0130 (BNSF), FRA–2018–0022 (UP), FRA–2018–0031 (LIRR), and FRA–2019–0057 (MNCW) (available online at *www.regulations.gov*).

remedial action timelines in the Remedial Action Table would apply).

As noted in the NPRM, the increased verification period is justified by the logistical and safety benefits of continuous rail testing. Because the test vehicle does not have to stop and verify each suspected defect, more track can be inspected at greater speeds with significantly less interruption to revenue service. The more time-consuming analysis of the test data can be conducted off-site and reviewed at an optimal speed not related to the speed of the test vehicle. Additionally, the test data can be more thoroughly compared to past test runs over the same section of track to better identify possible defect propagation and growth. The decreased interruption to revenue service allows track owners to test track more frequently. FRA expects that continuous rail testing would substantially decrease the overall cost to the railroad industry while improving rail safety.

As noted in section IV.A of the NPRM (*see* 84 FR 72528–30), since 2009, a number of railroads have implemented continuous rail testing programs through limited, conditional waivers of § 213.113(b). As discussed above, § 213.113(b) requires track owners who learn that a rail in their track contains an indication of a defect listed in the Remedial Action Table to verify the indication within four hours and take remedial action in accordance with the Remedial Action Table. The Remedial Action Table prescribes the required remedial actions (and timelines for taking those actions) based on the severity of the defects identified. In other words, there is a built-in safety threshold in the Remedial Action Table for each known defect depending on the defect type and size. Generally, the waivers FRA has granted to date allowing railroads to conduct continuous rail testing programs provide a longer period of time to verify indications of defects than permitted by § 213.113(b), thereby allowing the railroads to prioritize the verification of those defects based on the severity of the indications identified.

Under the existing waivers, suspect locations are not prioritized arbitrarily, but are categorized based on the ultrasonic reflective responses viewed by the analyst. In other words, analysts interpret the collected ultrasonic reflective responses, estimate each indication type and size, and, based on that estimate, categorize the suspect locations in terms of severity and remedial action required by the Remedial Action Table (typically suspect locations are categorized as ''priority one,'' ''priority two,'' or ''priority three''). Priority one indications are suspected locations above the threshold that, if verified as a defect, would require remedial action note ''A,'' ''A2,'' or ''B'' under the Remedial Action Table. Thus, as proposed, these suspect locations must be field-verified within the timeframe listed in § 213.240(e)(2).

Those suspected locations that, if verified as a defect, would not require either remedial action ''A,'' ''A2,'' or ''B'' must be field-verified within the timeframe listed in § 213.240(e)(1), and are commonly referred to in the industry as either ''priority two'' or ''priority three'' indications, depending on the clarity of the indication. Often, when the ultrasonic test data produces a response where the analyst believes a defect is present because of the strength of the ultrasonic reflective signal, but that signal does not indicate a suspect defect of the type and/or size requiring remedial action ''A,'' ''A2,'' or ''B,'' the track owner lists the indication as a priority two. All other suspect locations identified by the analyst as potential defects or questionable ultrasonic responses are often marked as priority three suspect locations by the track owner. These so-called ''priority threes'' are indications where the ultrasonic reflective data does not produce a clear indication of defect type or size, but produces an unfamiliar or questionable response. Because many variables affect ultrasonic responses, the priority three suspect type is the most commonly indicated, requiring hand-verification to check that location to ensure nothing is being missed or misinterpreted that might result in a rail failure and subsequent derailment.

The Remedial Action Table reflects the fact that all verified defects pose a potential risk of sudden failure, depending on the conditions, even with defects deemed to be less severe than others. Data from the existing waivers demonstrates that, although less than two percent of the priority three suspect locations are found to be actual rail defects, priority three suspect locations account for approximately 85 percent of the field-verified defects found as a result of continuous testing. Priority one and priority two suspect locations are found to be actual rail defects in approximately 95–99 percent and 65–70 percent of the cases, respectively. Thus, although priority three suspect locations have a much higher probability of a false positive, they are also by far the most common indication of an actual defect. Accordingly, FRA finds that safety necessitates continuing to require the field verification of all defects identified by tests carried out under § 213.237 or § 213.239.

Further, FRA is providing additional flexibility in the rail flaw detection processes to promote innovative approaches to improving safety in railroad operations. Section 213.240 provides track owners the option to conduct continuous rail testing to satisfy the rail inspection requirements in § 213.237 or, where applicable, § 213.339. This section allows additional time for verification of indications of potential rail flaws identified through continuous testing. This additional time allows for improvements in planning and execution of rail inspections and rail defect remediation, enabling track owners to conduct rail inspections with smaller impacts on railroad operations. By reducing these impacts, more track time may become available to conduct inspections and maintenance.

However, as continuous testing is a more complicated process compared to the traditional stop-and-verify rail inspection process, additional criteria have been adopted to ensure that this elective process is conducted in a manner that is in the interest of safety, with sufficient recordkeeping and transparency to allow for adequate FRA oversight. The continuous rail test section would not modify the required frequency of rail inspections or the applicable procedural requirements as set forth in §§ 213.237 and 213.339, nor does it make any change to the remedial actions required after field verification of a rail defect as described in § 213.113(c).

B. Removal of the High-Density Commuter Line Exception

FRA is removing what is commonly referred to as the ''high-density commuter line exception'' from the track inspection requirements in § 213.233. This exception applies to ''high density commuter railroad lines where track time does not permit on-track vehicle inspection and where track centers are 15 feet or less apart'' and exempts those operations from 49 CFR 213.233(b)(3). Section 213.233(b)(3) requires each main track to be traversed by vehicle or inspected on foot at least once every two weeks and each siding at least once each month. Although other provisions of § 213.233 do require that such track be inspected, § 213.233(b)(3) focuses on the direct manner of conducting those inspections over or on the subject track.

On May 17, 2013, Metro-North Commuter Railroad (Metro-North) passenger train 1548 was traveling eastbound from Grand Central Station,

New York, toward New Haven, Connecticut, when it derailed in Bridgeport, Connecticut, and was struck by westbound Metro-North passenger train 1581. The accident resulted in approximately 65 injuries and damages estimated at over $18 million. During the investigation, a pair of broken compromise joint bars were found at the point of derailment. One of those broken joint bars was located on the gage side of the track over which train 1548 was traveling (main track 4). NTSB's investigation also found that Metro-North last inspected the track in the area two days before the accident, but the inspection was conducted by an inspector in a hi-rail vehicle traveling on main track 2, which was next to main track 4, and the joint bars in question would not have been visible during that inspection. *See* NTSB's Railroad Accident Brief, October 24, 2014, *available at https://www.ntsb.gov/investigations/AccidentReports/Reports/RAB1409.pdf.*

In response to the Bridgeport accident, NTSB issued Safety Recommendation R–14–11 to FRA, which recommended that FRA revise the Standards, specifically § 213.233(b)(3), to remove the high-density commuter line exception.

Subsequently, in 2015, Congress passed the FAST Act, and mandated in section 11409 that the Secretary of Transportation evaluate the Standards to determine if the high-density commuter line exception should be retained. After considering safety, system capacity, and other relevant factors such as the views of the railroad industry and relevant labor organizations, FRA has concluded, and the TSS Working Group unanimously agreed, that the high-density commuter line exception should be removed. All railroad operations, whether commuter or freight, or both, should be subject to the same inspection method requirements in § 213.233(b)(3).

C. Incorporation of Flange-Bearing Frog and Heavy-Point Frog Waivers

FRA is revising two sections of part 213 (§§ 213.137 and 213.143) to incorporate longstanding waivers that, with certain limiting conditions, permit the use of flange-bearing frogs and heavy-point frogs that do not comply with current FRA standards. FRA finds that under certain conditions, use of these types of frogs provide safety benefits by more evenly distributing loads across the frogs with minimal impact to rail surfaces, as compared to other types of rail frogs. Incorporating these waivers into FRA's regulations will result in industry cost savings that are larger than the cost savings that result from the waivers alone.

i. Heavy-Point Frogs

A heavy-point frog (HPF) is a unique design that has a thicker frog point than a traditional frog. A thicker frog point provides more inert mass, which results in reduced metal fatigue from impact loading, greater durability, reduced susceptibility to deformation of the frog point, and better ability to guide the wheel flange toward the proper flangeway. In an HPF, the gage line is 11⁄32 (0.3438) of an inch thicker than a traditional, rail-bound manganese frog point. This reduces the standard guard check distance from 4 feet, 6⅝ (54.6250) inches to 4 feet, 6²⁹⁄₆₄ (54.4531) inches, which does not comply with minimum guard check distance for Class 5 track.

As defined in 49 CFR 213.143, and as shown in Figure 1 below, guard check gage is the distance between the gage line of a frog to the guard line (a line along the side of the flangeway nearest to the center of the track and at the same elevation as the gage line) of its guard rail or guarding face, measured across the track at right angles to the gage line (a line ⅝ of an inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure).

The purpose of the minimum guard check gage is to ensure a vehicle's wheels are able to pass through the frog without one of the wheels (the right wheel in Figure 1) striking the frog point. In Figure 1, there are two key dimensions: ''wheel check,'' which is the distance between the two wheels plus the wheel flange thickness at the gage line (⅝ of an inch below the running surface); and ''guard check gage,'' which is defined above. As illustrated in Figure 1, guard check gage must be greater than or equal to the wheel check so there will be a ''flange–frog point gap'' between the right wheel and frog point interface, when the left wheel flange passes against the guard rail. As stated above and further illustrated in Figure 1, this ensures the right wheel does not strike the frog point.

Figure 1 depicts a standard frog, which has a standard guard check gage of 54.625 inches, meeting the requirement for Class 5 track (greater than or equal to 54.5 inches). A heavy-point frog has a standard guard check gage of 54.4531 inches, which does not meet current FRA standards for Class 5 track but does meet the current standards for Class 4 track (greater than or equal to 54.375 inches).

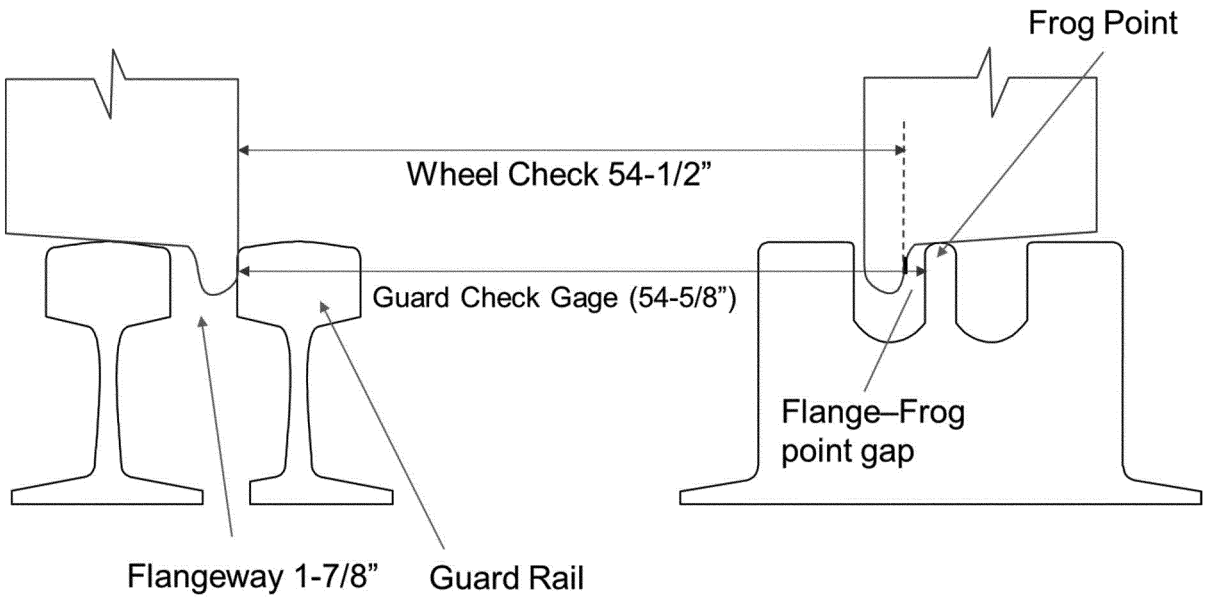

Figure 1

In 2003, FRA approved a waiver permitting operation of trains at Class 5 track speeds over certain HPFs at which the guard check gage, under existing 49 CFR 213.143, conforms to the standards applicable to Class 4 track. *See* docket number FRA–2001–10654 (available online at *www.regulations.gov*). Among other conditions to ensure safety, the waiver requires that the frog, and the guard rails on both tracks through the turnout containing the frog, be equipped with at least three through-gage plates (metal plates underneath the frog that expand across the entire frog to provide both vertical support and lateral restraint for the frog components) with elastic rail fasteners, and guard rail braces that permit adjustment of the guard check gage without removing spikes or other fasteners from the crossties. The waiver also requires that track owners retain records of the location and description of each turnout containing an HPF, notify FRA prior to operating trains over a new HPF, and provide proper information and training to any employees designated to inspect or supervise restoration or renewal of areas containing an HPF. The waiver also requires that each HPF bear an identifying mark. Since FRA initially granted the waiver in 2003, FRA has renewed the waiver three times, most recently on February 15, 2018. The waiver is currently set to expire on February 15, 2023.

To date, no accidents have been reported to FRA as having occurred at or near locations where HPFs are installed. Accordingly, FRA finds that the safety of HPFs have been proven. As discussed in more detail below in the section-by-section analysis for § 213.143, FRA is incorporating some of the waiver provisions into the regulation.

ii. Flange-Bearing Frog Crossing Diamonds

Flange-bearing frogs (FBF) are different from the traditional tread-bearing frogs used by freight railroads in most crossing diamonds and turnouts in the United States. In traditional tread-bearing crossing diamonds, a vehicle's wheels must run over the gaps in the running rails. This creates very high impact forces between the wheels and rails, which can damage both the diamond and components of the vehicle (*e.g.,* the vehicle's wheels and axles). For FBFs, the flangeway is designed to support the wheels running on their flanges. Ramps provide a smooth transition from tread-bearing to flange-bearing and reduce the dynamic wheel forces significantly. This can greatly reduce noise and vibration, increase the service life of crossing diamonds and vehicle components, reduce the need for maintenance, and possibly decrease the need for speed restrictions due to worn, damaged, or defective crossing diamonds.

In 2000, FRA approved a waiver granting relief from the flangeway depth requirements in 49 CFR 213.137(a) as well as the limitation in 49 CFR 213.137(d) restricting FBFs to Class 1 track. *See* docket number FRA–1999–5104 (available online at *www.regulations.gov*). Among other conditions, this initial waiver allowed track owners to install up to five FBF crossing diamonds in Class 2 or 3 track. FRA limited its initial approval to five FBF crossings under specific operational conditions and conditions requiring vehicle and track inspections designed to closely monitor the performance of the FBFs. In 2010, based on the successful implementation of the initial waiver and data gathered as a result, at industry's request, FRA granted a revised waiver allowing installation of FBF crossing diamonds on Classes 2 through 5 track with crossing angles above 20 degrees unless movable guard rails are used. Among other conditions, the waiver required that newly installed FBF crossing diamonds be inspected daily during the first week of operation, weekly for the month after, and monthly thereafter. The waiver also required the track owner to prepare maintenance manuals and properly train its personnel. The waiver was renewed in May 2020, and is set to expire in May 2025.

To date, no accidents have been reported to FRA as having occurred at or near FBFs. Accordingly, FRA finds that the safety benefits of FBFs have been proven and incorporates some of the waiver provisions into the regulation. Because the performance of the FBF crossing diamonds installed under the waiver is the primary basis for FRA's conclusion that these frogs are safe, FRA finds that it is in the best interests of public safety to retain, as

much as reasonable, similar limitations imposed under the waiver.

IV. Discussion of Comments and Conclusions

FRA received six sets of comments in response to the NPRM. Three sets of comments were from RSAC members and included comments from the National Transportation Safety Board (NTSB), joint comments submitted from the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) (jointly referred to as ''AAR/ASLRRA''), and joint comments from the Brotherhood of Maintenance of Way Employes Division (BMWED) and the Brotherhood of Railroad Signalmen (BRS) (jointly referred to as ''BMWED/BRS''). FRA also received comments from Herzog Service, Inc., and the American Association for Laboratory Accreditation (A2LA). Finally, FRA received a joint comment from the following seven entities: The American Chemistry Council, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Chlorine Institute, the Fertilizer Institute, the Renewable Fuels Association, and the Sulphur Institute (collectively referred to as the ''Chemical, Energy, and Agricultural Trade Associations'').

FRA thanks the commenters for the time and effort put into each of the comments received. Directly below FRA discusses the comments generally applicable to this rulemaking. Comments directed at specific proposed regulatory changes are discussed below in the section-by-section analysis. The order in which FRA discusses the comments below is not meant to imply that FRA is prioritizing one commenter over another. Rather, FRA has organized the discussion of comments in as logical manner as possible.

BMWED/BRS

In their comment, BMWED/BRS raised a number of concerns with the NPRM, primarily regarding the proposal to allow for continuous rail testing. Although many of BMWED/BRS's concerns are discussed below in the section-by-section analysis, they recommend that certain additional conditions, not proposed in the NPRM, be required for continuous rail testing. BMWED/BRS assert that suspect locations containing a suspect defect that, if verified, would require remedial action A, A2, or B identified in the Remedial Action Table contained in § 213.113(c) (Remedial Action Table), as well as indications of a ''possible transverse defect estimated to be greater than 25%,'' should require immediate protection. Additionally, BMWED/BRS contend that the Remedial Action Table should be revised for continuous rail testing. Specifically, BMWED/BRS state that ''the number of days/hours in the Remedial Action Table'' should be reduced to ''accommodate the additional 36 to 84 hours for 'field verification' . . . in order to maintain an equivalent level of safety.'' A proposed revised Remedial Action Table was attached to BMWED/BRS's comment. Finally, BMWED/BRS recommend that FRA require railroads ''opting to use [continuous rail testing] under proposed § 213.240 to at least double the frequency of inspections on each track segment.''

FRA disagrees that these changes are needed or justified. As discussed in more detail in the NPRM (*see* 84 FR 72528–30), continuous rail testing has been successfully trialed under the waiver process on select rail segments on multiple railroads in the United States since 2009. The data derived and the lessons learned from over 10 years of testing do not support the additional conditions proposed in BMWED/BRS's comment. Continuous rail testing has the potential to improve rail safety significantly and FRA is confident that § 213.240, as adopted in this final rule, successfully balances the flexibility needed to conduct continuous rail testing with conditions necessary to ensure at least an equivalent level of safety, and very likely improve it. FRA also finds that adopting the additional conditions proposed by BMWED/BRS would be a significant and unjustified disincentive to track owners' and railroads' use of continuous testing. Adopting such conditions could make continuous rail testing more onerous than traditional stop-and-verify testing (*e.g.,* by doubling the required number of inspections, requiring immediate protections for certain defects before field verification, and decreasing existing timeframes for imposing remedial action)—all of which could result in track owners and railroads forgoing adoption of continuous testing, and therefore, the associated safety benefits discussed throughout this final rule.

Additionally, BMWED/BRS advocate for an interpretation of existing § 213.5(a) and how it relates to a suspect location found during a rail inspection. BMWED/BRS assert that ''delayed application of the Remedial Action Table for suspect rail defects'' violates § 213.5(a) since once ''suspected defects are identified, the carrier 'knows or has notice' that the track does not comply with the requirements of Part 213.'' BMWED/BRS contend that ''[a]ll suspected rail defects must first be protected and then 'verified.' '' FRA does not agree that this interpretation of § 213.5(a) is consistent with regulatory language or longstanding FRA interpretation. An indication of a suspect defect is only that: An indication that a defect might exist. The track owner does not have knowledge or notice of an actual defect until the suspected defect is field-verified and confirmed to be a defect. This long-held interpretation is consistent with the structure of § 213.113.

Section 213.113(a) lists the actions a track owner must take when the owner ''learns that a rail in the track contains any of the defects listed in the table contained in paragraph (c),'' whereas § 213.113(b) lists the actions a track owner must take when the owner ''learns that a rail in the track contains an indication of any of the defects listed in the table contained in paragraph (c).'' Thus, the plain language of the regulation makes clear that an indication of a defect is not the same as a verified defect and thus § 213.5(a) would not require immediate remediation for an unverified indication of a defect.

Finally, BMWED/BRS state that ''FRA must assure that all verified defects be marked with a highly visible marking in compliance with § 213.237(e) or § 213.339(c) as appropriate.'' FRA notes that this is already required by §§ 213.237(e) and 213.339(c), and this final rule does not change that.

AAR/ASLRRA

In addition to comments directed at specific, proposed regulatory provisions, which are discussed below in the section-by-section analysis, AAR/ASLRRA raise a concern about training and qualification provisions. Specifically, AAR/ASLRRA contend that 49 CFR part 243, which was originally issued in 2014 but had its effective date delayed multiple times, ''generally made obsolete the previous need to codify scattershot training provisions throughout the Federal railroad safety regulations,'' and that any ''references to training and qualification in the final rule [are] unnecessary and duplicative.'' FRA disagrees. As § 243.1 expressly states, part 243 contains the general minimum training and qualification requirements for each category and subcategory of safety-related railroad employee (§ 243.1(b)), and the requirements of part 243 do not exempt any other requirements in this chapter (§ 243.1(c)). Further, unless otherwise noted, part 243 augments other training and

qualification requirements contained in this chapter (§ 243.1(d)). The clear wording of part 243 shows that training and qualification requirements codified in other parts of the CFR are not obsolete or duplicative.

A2LA

A2LA, in its comment, generally favors utilizing International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) accreditation for multiple areas of part 213, including requiring continuous rail testing be done by ISO/IEC accredited inspection agencies, adopting ISO/IEC standards for qualification requirements, and adopting ISO/IEC accreditation for track inspections. FRA does not believe ISO/IEC standards are necessary for purposes of this final rule. The qualification requirements already included in part 213 and adopted in this final rule, along with continued FRA oversight, are sufficient to ensure railroad personnel conducting relevant tasks are properly trained and possess the requisite skills to complete their jobs safely and effectively.

Chemical, Energy, and Agricultural Trade Associations

The Chemical, Energy, and Agricultural Trade Associations ''support allowing inspection of rail using continuous rail testing,'' but raise a general concern ''that the proposed revisions, particularly the extension of the verification timeframes could lead to a scenario where fatal flaws remained unaddressed and subject trains to potential derailments.'' The Associations go on to ''caution FRA from implementing an overly extended verification timeframe and encourage a conservative approach when considering what is a critical flaw requiring immediate attention.'' FRA appreciates the Associations' concerns. However, FRA is confident that the procedures governing continuous rail testing and the extension of field verification timeframes are sufficient to ensure railroad safety. Since 2009, various continuous rail testing procedures and timeframes have been trialed and fine-tuned through the waiver process on multiple railroads. Waiver data indicates that as track owners have increased their use of continuous rail testing under the waivers, they have realized a decrease in broken-rail-caused accidents and an increase in overall safety. For example, Norfolk Southern Railway, which began operating under a continuous test waiver on limited territories in 2015 and since that time has expanded its continuous test territory numerous times, experienced 34 percent fewer main line service failures (broken rails that do not result in an accident) in 2018 as compared to 2014. Similarly, CSX Corporation, which has been piloting continuous test technologies and methodologies under an FRA waiver since 2009 and, similar to NS, has expanded its continuous test territories numerous times, had zero broken rail-caused main track accidents in 2019. FRA safety data demonstrates a nationwide 39 percent reduction in FRA reportable broken rail caused accidents from June 2019 to May 2020. In addition, since beginning continuous rail testing under waiver in 2018, the Long Island Railroad (LIRR) has tripled its testing frequency with no additional train delays. This final rule is based on the data and experience gained through those waivers.

V. Section-by-Section Analysis

Section 213.1 Scope of Part

Proposed rule: Section 213.1 sets forth the scope of part 213. Paragraph (b) specifies that subparts A through F of part 213 apply to track Classes 1 through 5 and that subpart G and certain individual sections of subpart A apply to track Classes 6 through 9. FRA proposed to amend paragraph (b) of this section to reference proposed § 213.240 (continuous rail testing). Together with proposed § 213.240, this change would allow track owners to elect to use continuous rail testing conducted under § 213.240 on Class 6 through Class 9 track to satisfy the requirement for internal rail testing under § 213.339.

Comments: FRA received no comments on this proposed change.

Final rule: The change is adopted as proposed in the NPRM.

Section 213.5 Responsibility for Compliance

Proposed rule: Section 213.5 specifies the parties responsible for compliance with part 213. Paragraph (a)(3) of this section addresses persons responsible for overseeing operations over track that is known to be not in compliance with part 213. That paragraph requires operations over such track to be overseen by a person designated under § 213.7(a) who has ''at least one year of supervisory experience in railroad track maintenance.'' FRA proposed to remove the requirement for the person overseeing operations on non-compliant track to have ''one year of supervisory experience in railroad track maintenance.'' This proposed change would conform to the proposed changes to § 213.7, which are discussed below.

Additionally, FRA proposed to add the following sentence to the end of paragraph (a)(3): ''If the operation is on Continuous Welded Rail (CWR) track, the person under whose authority operations are conducted must also be designated under § 213.7(c).'' This change is meant to clarify that in order for a person to authorize operations over CWR track that does not meet all the requirements of part 213, the person must be designated and qualified by the track owner under § 213.7(c) to inspect CWR track or supervise the installation, adjustment, and maintenance of CWR track.

Comments: FRA received no comments on these proposed changes.

Final rule: The changes are adopted as proposed in the NPRM.

Section 213.7 Designation of Qualified Persons To Supervise Certain Renewals and Inspect Track

Proposed rule: Section 213.7 requires track owners to designate qualified persons to inspect track and supervise certain track restorations and renewals, and specifies the records related to these designations a track owner must maintain. The section also requires these qualified persons to have ''written authorization'' from the track owner to prescribe remedial actions to address identified nonconformities in the track.

Paragraph (a)(1) of this section specifically requires that a person designated to supervise the restoration and renewal of track under traffic conditions have, among other things, either one year of supervisory experience in railroad maintenance or a combination of supervisory experience in track maintenance and training. For the reasons discussed in the NPRM, and consistent with the recommendations of the TSS Working Group, FRA agreed that requiring supervisory experience to qualify under paragraph (a)(1) creates a possible conflict in the regulatory language (an employee cannot be qualified under that paragraph unless he or she has supervisory experience yet an employee would not be able to gain supervisory experience without first being qualified). Accordingly, FRA proposed to remove the supervisory requirement in the paragraph.

Paragraphs (a)(3), (b)(3), (c)(4), and (e) each require ''written'' records. The records required in paragraphs (a)(3), (b)(3), and (c)(4) relate to individual's authorization from a track owner to prescribe remedial actions. The records required in paragraph (e) relate to the designation of individuals authorized to prescribe such actions. As noted in the NPRM, FRA finds that the term ''written'' can be interpreted to

encompass both physical hardcopies or electronic versions of the required authorizations or designations. To avoid any possible confusion and consistent with the TSS Working Group's recommendations, FRA proposed to remove the term ''written'' from each of these paragraphs to make clear that the required authorizations or designations could be recorded and conveyed either in hardcopy or electronic form.

FRA also proposed to add new paragraph (e)(2) to require records of designations under § 213.7 to include the date each designation is made. To incorporate this revision, FRA proposed to redesignate paragraph (e)(2) as paragraph (e)(3). FRA also proposed to revise the resulting new paragraph (e)(3) to require the records to contain not only the basis for each designation as paragraph (e)(2) currently requires, but also to require track owners to include the method used to determine that the designated person is qualified. FRA intended this change to better conform the section with the requirements of § 213.305(e) for high-speed operations, and better describe what FRA means by the ''basis for each designation.'' As noted in the NPRM, to meet this requirement, a track owner could include information about the nature of any training courses the designated person participated in and how the track owner determined that the designated person successfully completed the course (*e.g.,* test scores, demonstrated proficiency, etc.).

Paragraph (e)(3) also requires designation records under § 213.7 to include records of track inspections ''made by each designated qualified person.'' FRA proposed to remove the requirement, finding it redundant with § 213.241's requirement that track owners maintain records of track inspections made by qualified inspectors that are ''kept available for inspection and copying by [FRA] during regular business hours.'' Accordingly, FRA proposed to redesignate paragraph (e)(3) as new paragraph (f). FRA also proposed rephrasing the paragraph to require that FRA make its request for records during normal business hours and provide the track owner ''reasonable notice'' before requiring production. As explained in the NPRM, the meaning of the term ''reasonable notice'' depends on the specific facts of each situation and FRA does not intend these revisions to substantively change recordkeeping requirements or FRA's existing inspection practices. These revisions are primarily intended to clarify how FRA currently enforces the regulation.

Comments: With regard to the proposed introduction of the phrase ''reasonable notice'' in new proposed paragraph (f), AAR/ASLRRA, in their comment, state that ''what constitutes 'reasonable notice' is inherently subjective'' and assert that ''a railroad acting in good faith to provide requested records to FRA representatives upon 'reasonable notice' should never be subject to civil penalties.'' Alternatively, AAR/ASLRRA suggest that FRA adopt ''a presumptive ten days' notice requirement.''

Final rule: As explained above and in the preamble to the NPRM, the term ''reasonable notice'' depends on the specific facts of each situation (*e.g.,* time of day request made, day of the week request made, number of records requested). FRA does not agree that it is appropriate to adopt a blanket statement that a railroad can never be subject to civil penalties so long as it acts in ''good faith.'' The subjective intent behind a railroad's actions is not a necessary consideration for whether it complies with the requirement to produce records. Likewise, FRA declines to adopt a blanket 10 days' notice requirement. Although current §§ 213.241(b) and 213.369(b) include a reference to a 10 days' notice for track inspection records, that only applies to paper records that are not maintained at the designated location where they are requested. Electronic records or those paper records maintained at the designated location where they are requested are not subject to the automatic 10 days' notice requirement under current §§ 213.241(b) and 213.369(b). FRA received no other comments on the proposed revisions to this section. Accordingly, the revisions to § 213.7 are adopted as proposed in the NPRM.

Section 213.9 Classes of Track: Operating Speed Limits

Proposed rule: Section 213.9 sets forth the maximum allowable operating speeds for both passenger and freight trains for excepted track, and track Classes 1 through 5 (track speeds up to 90 m.p.h. for passenger trains and up to 80 m.p.h. for freight trains). Paragraph (b) of this section addresses situations in which a track segment does not meet the requirements for its intended class and specifies that if a segment of track does not at least meet the requirements for Class 1 track, operations may continue under the authority of a person designed under § 213.7(a) ''who has at least one year of supervisory experience in railroad track maintenance'' for up to 30 days. Consistent with the revisions proposed to § 213.7(a) discussed above, FRA proposed to revise this paragraph to remove the requirement that a person designated under § 213.7(a) have a least one year of ''supervisory'' experience in railroad track maintenance. Please see the above discussion of § 213.7(a).

Comments: FRA received no comments on this proposed change.

Final rule: The change is adopted as proposed in the NPRM.

Section 213.11 Restoration or Renewal of Track Under Traffic Conditions

Proposed rule: Section 213.11 requires operations over track undergoing restoration or renewal under traffic conditions and not meeting all the requirements of part 213 to be conducted under the continuous supervision of a person designated under § 213.7(a) with ''at least one year of supervisory experience in railroad track maintenance.'' Consistent with the proposed changes to § 213.7(a), FRA proposed to remove the requirement that the person supervising restoration or renewal of track under traffic conditions have a minimum of one year of ''supervisory'' experience in track maintenance. Additionally, to clarify an existing regulatory requirement, FRA proposed to add text stating that if the restoration or renewal is on continuous welded rail (CWR) track, the person must also be qualified under § 213.7(c).

To clarify that a person designated under § 213.7(a), and (c) if applicable, may not authorize movement over any track not meeting all the requirements of part 213 for its particular class, FRA also proposed adding a sentence stating that the ''operating speed cannot be more than the maximum allowable speed under § 213.9 for the class of track concerned.''

Comments: FRA received no comments on the proposed changes.

Final rule: The changes are adopted as proposed in the NPRM.

Section 213.113 Defective Rails

Proposed rule: Section 213.113 prescribes the required actions a track owner must take when it learns that a rail contains an indication of a defect and after the track owner verifies the existence of the defect. To clarify that the requirement that an indication of a defect be verified within four hours would not apply if a track owner elects to conduct continuous testing under proposed § 213.240, FRA proposed to modify the second sentence in paragraph (b) so that it would begin with ''except as provided in § 213.240, ...''

Comments: FRA received no comments on this proposed change.

Final rule: The change is adopted as proposed in the NPRM.

Section 213.137 Frogs

Proposed rule: Section 213.137 contains the standards for use of frogs. As discussed in detail in the preamble to the NPRM, a frog is a track component used at the intersection of two running rails to provide support for wheels and passage for their flanges, thus permitting wheels on either rail to cross the other intersecting rail. *See* 84 FR 72530.

Paragraph (a) of § 213.137 prescribes limits on the flangeway depth of a frog. These limits effectively prohibit the use of flange bearing frogs (FBFs) on Classes 2 through 5 track. However, since 2000, railroads have operated under a waiver that allowed the installation of FBFs in crossing diamonds in track Classes 2 through 5, and exempted those diamonds from the flangeway depth requirements of paragraph (a), subject to certain conditions. As discussed in more detail in section IV.C of the NPRM (*see* 84 FR 72530–32), FRA has renewed the waiver multiple times, and currently the waiver is set to expire in May 2025.

After careful review of safety performance under the waiver and analysis of track-caused derailments, as noted in the NPRM, FRA has identified no negative safety implications with the use of FBFs. As such, in the NPRM, FRA proposed to modify § 213.137 by adding paragraph (e) that would allow the use of FBFs in crossing diamonds in Classes 2 through 5 track consistent with the conditions of the existing waiver. The existing waiver limited the installation of FBFs to locations with crossing angles above 20 degrees unless moveable guard rails are used and generally required track owners to initially inspect newly installed FBFs more often than traditional frogs. The waiver also required track owners to document certain information about the location of the installed FBFs (*e.g.,* crossing angle, tonnage, speed, direction and type of traffic), develop maintenance manuals specific to the frogs, and properly train all personnel responsible for inspecting or repairing any FBF. *See* proposed paragraphs (e)(1)–(3).

Comments: FRA received comments generally supporting the proposed changes. AAR/ASLRRA, while strongly supporting the incorporation of the longstanding waiver for FBFs, disagreed with FRA's proposal to include ''many of the same administrative and recordkeeping provisions found in the'' waiver. AAR/ASLRRA contend that those additional administrative requirements ''are no longer necessary or relevant once FRA has determined the new technology is safe.''

Final rule: FRA agrees with AAR/ASLRRA's statement that the administrative requirements imposed as conditions of the waiver are no longer necessary given that the use of FBF's as proposed has been proven safe, and the regulations already require track owners to provide employees responsible for inspecting or repairing FBFs to be appropriately trained and demonstrate appropriate knowledge, understanding, and ability to do so. Accordingly, FRA is not adopting proposed paragraphs (e)(2) and (e)(3). FRA, however, is maintaining the requirement from proposed paragraph (e)(1) that FBFs may only be used at locations with crossing angles greater than 20 degrees unless movable guard rails are used. As noted in the NPRM, when a crossing diamond has a smaller crossing angle, there is a heightened risk of damage to the rail head when the wheel flange crosses over it.

Because FRA is not adopting proposed paragraphs (e)(2) and (e)(3), FRA is including the language proposed for paragraph (e)(1) at the end of new paragraph (e). The changes proposed in the NPRM are otherwise adopted, with the revisions discussed above.

Section 213.143 Frog Guard Rails and Guard Faces; Gage

Proposed rule: This section prescribes a minimum and maximum value for guard check and guard face gages, respectively. Guard check gage is the distance between the gage line of a frog and the guard line of its guardrail or guarding face. Allowable minimum dimensions vary with track classification, *i.e.,* train speed.

As discussed in more detail in section IV.C of the NPRM (*see* 84 FR 72530–32), in 2003, FRA granted a waiver (docket number FRA–2001–10654) to members of the railroad industry allowing operation of trains at Class 5 speeds over a heavy-point frog (HPF) with guard check gage conforming to the standards for Class 4 track frogs. FRA granted several extensions of this waiver, and it is currently set to expire in February 2023.

After careful review of safety performance under the waiver and analysis of track-caused derailment data, FRA identified no negative safety implications with the use of HPFs under the conditions outlined in the waiver. As such, in the NPRM, FRA proposed to modify § 213.243 to add footnote 3 to the table in § 213.143 which, consistent with the conditions of the waiver, would: (1) Allow the guard check gage for HPFs on Class 5 track to be less than the current 4-foot, 6½-inch minimum, but not less than 4 feet, 6⅜ inches (the current minimum for frogs in Class 4 track); (2) require that each track owner maintain records of the location and description of each HPF and make that information available to FRA upon request during normal business hours following reasonable notice; (3) require that each HPF and the guard rails on both rails through the turnout be equipped with at least three serviceable through-gage plates with elastic rail fasteners and guard rail braces that permit adjustment of the guard check gage without removing spikes or other fasteners from the crossties; (4) require that each track owner provide proper maintenance manuals, instructions, and training to any § 213.7 designated employees who inspect track or supervise restoration and renewal of track, or both, in areas that include turnouts with HPFs; and (5) require that each HPF bear an identifying mark that identifies the frog as an HPF.

Comments: FRA received comments generally supporting the proposed changes. AAR/ASLRRA, while strongly supporting the incorporation of the longstanding waiver for HPFs, disagreed with FRA's proposal to include ''many of the same administrative and recordkeeping provisions found in the'' waiver. AAR/ASLRRA assert that those additional administrative requirements ''are no longer necessary or relevant once FRA has determined the new technology is safe.''

Final rule: Preliminarily, for formatting reasons, FRA is moving the content of proposed footnote 3 to a new paragraph (b). The existing language in § 213.143 will be designated as paragraph (a), with a slight grammatical revision to the introductory language, and the existing table will be titled ''Table 1 to § 213.143(a).''

FRA agrees with AAR/ASLRRA's statement that the administrative requirements imposed as conditions of the waiver are no longer necessary given that the use of HPFs as proposed has been proven safe and the regulations already require track owners to provide employees responsible for inspecting or repairing HPFs to be appropriately trained and demonstrate appropriate knowledge, understanding, and ability to do so.

Accordingly, FRA is not adopting the specific recordkeeping or training requirements proposed in paragraphs (a) or (c) of proposed footnote 3, and is also not adopting the second sentence of proposed paragraph (d). FRA is retaining the remainder of the proposed requirements related to HPFs, but in this final rule, FRA is designating proposed

paragraphs (b) and (d) of footnote 3, as paragraphs (b)(1) and (2). The changes as proposed in the NPRM are otherwise adopted, with the revisions discussed above.

Section 213.233 Visual Track Inspections

Proposed rule: Section 213.233 sets forth general requirements for the frequency and method of performing required visual track inspections on excepted track and track Classes 1 through 5. To better reflect the existing scope of this section, FRA proposed to add the word ''visual'' to the section heading so that it would read ''Visual track inspections.'' Because other sections in part 213 cover different types of inspections and inspection methods for the same types of track (automated inspections, inspections of rail, etc.), this proposed change would clarify that this section deals specifically with visual track inspections. This proposal would also make § 213.233's heading consistent with the heading for the corresponding high-speed track section, § 213.365, ''Visual inspections.'' As discussed below, FRA proposed to revise the heading for § 213.365 so that the headings are the same for both §§ 213.233 and 213.365.

Comments: AAR/ASLRRA contend that, although § 213.233 ''currently contemplates human visual inspection . . . as technology evolves in the future,'' these inspections ''may not always be conducted 'visually' by humans.'' AAR/ASLRRA concludes that adding the word ''visual'' to the heading of § 213.233 ''could make them more outdated in the future.''

Final rule: FRA disagrees. As the commenters note, § 213.233 currently requires visual track inspections and the change to the heading is meant to make that clear, as well as make the heading of § 213.233 consistent with the heading of § 213.365, which applies to higher-speed tracks. If future regulatory changes are made to § 213.233 to allow the use of non-visual inspections specifically under the section's requirements, the heading could be updated at that time. Moreover, the change does not affect the use of non-visual inspection methods as provided in other sections of this part. The change is therefore adopted as proposed in the NPRM.

Proposed rule: Paragraph (b) requires visual track inspections to be made on foot or by ''riding over'' the track at a speed allowing the inspector to visually inspect the track structure for compliance; and, when inspecting from a vehicle, this section sets the vehicle's maximum speed at 5 m.p.h. when ''passing over'' track crossings and turnouts. Paragraph (b) also specifies that one inspector in a vehicle may inspect up to two tracks at one time under certain conditions, including that the second track is not centered more than 30 feet from the track upon which the inspector ''is riding.'' Similarly, two inspectors may inspect up to four tracks from one vehicle under certain conditions, including that the second track center is within 39 feet from the track on which the inspectors ''are riding.'' For grammatical consistency throughout this section, FRA proposed revising the terms ''riding over'' and ''passing over'' to ''traversing'' in this paragraph and, for the same reason, FRA also proposed to revise the terms ''is riding'' and ''are riding'' to ''traverses'' and ''traverse.''

Additionally, FRA proposed removing the terms ''upon which'' from paragraphs (b)(1) and (2), and changing ''is actually'' to ''must be'' in paragraph (b)(3). These changes are not meant to affect the meaning of § 213.233, but are instead made for grammatical consistency.

Comments: FRA received no comments on these proposed changes.

Final rule: The changes are adopted as proposed in the NPRM.

Proposed rule: As discussed in more detail in section IV.B of the NPRM (*see* 84 FR 72530), FRA proposed to remove the last sentence of paragraph (b)(3), also known as the high-density commuter line exception. Paragraph (b)(3) requires, among other things, that each main track be traversed by a vehicle or inspector on foot at least once every two weeks, and every siding at least every month. The high-density commuter line exception applies where track time does not permit on-track vehicle inspection and where track centers are 15 feet or less apart and exempts those operations from the inspection method requirements of paragraph (b)(3). FRA's proposal to remove this exception was directly responsive to Congress's direction in sec. 11409 of the FAST Act and NTSB's Safety Recommendation R–14–11. In addition, when proposed, FRA believed no track owner currently utilized this exception and the RSAC unanimously voted to remove the exception, so FRA concluded its removal would have little to no impact on the regulated industry.

Comments: Despite affirmatively stating during the RSAC proceedings that none of their members currently utilize the high-density commuter line exception, in response to the NPRM, AAR/ASLRRA provided comments stating that the National Railroad Passenger Corporation (Amtrak) utilizes the exception in three locations, Penn Station in New York City and in the Washington, DC and Boston terminals, and ''[c]ertain commuter railroads'' also utilize the exception. AAR/ASLRRA further argue that ''Amtrak is concerned that elimination of the exemption would result in roadway workers being required to conduct additional inspections at high traffic volume locations with narrow track centers.'' Consequently, AAR/ASLRRA assert that FRA should not adopt this proposal and, instead, study it further.

Final rule: FRA has considered the new information provided by AAR/ASLRRA and still concluded that the high-density commuter line exception should be removed. FRA finds that the exception is no longer justified and it is in the interest of safety that it be removed, based on the 2013 Metro-North Bridgeport, CT accident, discussed in greater detail in the NPRM (*see* 84 FR 72530), as well as internal evaluations by FRA. Track over which a large number of passengers traverse should be inspected at least in the same manner as other types of track. FRA notes that the high-density commuter line exception applies only to mainline track, so it is likely that any usage by Amtrak in Penn Station and the Washington, DC and Boston terminals is very limited. Additionally, FRA finds it is highly unlikely that the removal of the exception will result in any additional required track inspections since track inspectors will still be permitted to inspect tracks adjacent to the one they operate over. Inspectors will simply be required to alternate which track they traverse so that each track is actually traversed every two weeks, instead of always permitting the inspection from an adjacent track. This may require those railroads utilizing the exception to slightly revise their inspection practices. Combined with effective roadway worker protection, this should not increase the risk to roadway workers and should improve the quality of inspections. Thus, FRA has determined that continuing this exemption is not in the interest of safety and the change is adopted as proposed in the NPRM.

Proposed rule: FRA proposed three changes to paragraph (c). First, FRA proposed to add the word ''visual'' before ''track inspection'' in the introductory text. This was simply to make paragraph (c) consistent with the new heading for § 213.233 and would have no effect on the meaning of paragraph (c). Second, FRA proposed adding footnote 1 after the word ''weekly'' in the table in paragraph (c).

The proposed footnote defines the term ''weekly'' to be a seven-day period beginning on Sunday and ending on Saturday. This definition is consistent with FRA's past interpretation and enforcement practice.

Third, FRA proposed to add footnote 2 after the term ''passenger trains'' in the table in paragraph (c). The proposed language was suggested to the TSS Working Group by the Rail Heritage Association and FRA agrees that it would reduce unnecessary burden on certain regulated entities without negatively impacting safety. This proposed footnote would exempt, in two situations, entities from the required twice-weekly inspection requirement for track carrying passenger trains if the passenger train service consists solely of tourist, scenic, historic, or excursion operations as defined in 49 CFR 238.5. In the first situation, this exemption would apply where no passenger service is operated over the track during the inspection week. In the second situation, this exemption would apply where passenger service is operated during the inspection week but only on a weekend (Saturday and Sunday) or a 3-day extended weekend (Saturday and Sunday plus either a contiguous Monday or Friday) and an inspection is conducted before, but not more than one day before, the start of the weekend or 3-day extended weekend.

FRA also proposed to revise paragraph (d). Specifically, FRA proposed to add the phrase ''the § 213.7 qualified'' at the beginning of the paragraph to clarify that ''the person'' making the inspection that the rule text refers to is the qualified track inspector designated under § 213.7. Additionally, FRA proposed adding a sentence at the end of paragraph (d) stating that any subsequent movements to facilitate repairs on track that is out of service must be authorized by a § 213.7 qualified person. This section is silent as to whether or when movement over track that is out of service is permissible. FRA recognizes that certain movements are necessary to facilitate repairs and therefore does not interpret or enforce the regulatory language to bar such movements of equipment and materials on track that is out of service. The proposed revision was meant to embody that practice and interpretation and prevent possible confusion.

Comments: FRA received comments supporting one of the proposed changes and no adverse comment on any proposed change to paragraph (c) or (d).

Final rule: The changes are adopted as proposed in the NPRM.

Section 213.240 Continuous Rail Testing

In the NPRM, FRA proposed to add this new section to allow track owners to utilize continuous rail testing to satisfy the requirements for internal rail inspections under § 213.237 (for track Classes 1–5), or § 213.339 (for Class 6 track and higher). As explained in the NPRM and above, proposed § 213.240 would allow greater flexibility in the rail flaw detection process by providing additional time to analyze the data collected during continuous rail testing and field-verify indications of potential rail flaws. This additional time would allow for improvements in planning and execution of rail inspections and rail defect remediation, thereby lessening the impact on rail operations. As a result, more track time should become available to conduct maintenance and increase inspections. However, as continuous testing is a more complex process compared to the traditional stop-and-verify rail inspection, FRA proposed certain requirements related to this elective process to ensure it is conducted properly, which include requirements to maintain records that help ensure adequate FRA oversight.

Proposed rule: Proposed paragraph (a) would allow track owners to elect to use continuous rail testing instead of complying with § 213.113(b) (requiring field verification of indications either immediately or within 4 hours), provided the track owner complies with the minimum requirements of § 213.240. Proposed paragraph (a) also makes clear that the track owner must still comply with all other requirements of § 213.113 (including remedial action requirements), along with the requirements of proposed § 213.240. In other words, § 213.240 provides additional time to field-verify a suspect location, but once verified, the track owner must take appropriate remedial action as described in § 213.113(c).

Comments: Asserting that FRA has not provided enough data to evaluate the safety benefits of the proposed change to rail testing procedures, NTSB commented that ''[u]ntil data from continuous rail testing can be collected, analyzed, and verified as beneficial to safety, the FRA should require that traditional stop-and-verify rail inspections'' continue. FRA received additional comments regarding the proposal to allow continuous testing and those comments are discussed either above in Section IV if they were more general, or below in the paragraph that they specifically concern.

Final rule: As discussed above, and in the NPRM, continuous testing has been conducted by multiple railroads under FRA's waiver process for over a decade. FRA has reviewed and analyzed the data received from those waivers as well as data related to service failures and derailments. As noted above, waiver data indicates that as track owners have increased their use of continuous rail testing under the waivers, they have realized a decrease in broken-rail-caused accidents and an increase in overall safety. FRA is confident that it has sufficient data and experience supporting continuous testing as beneficial to safety. Paragraph (a) is therefore adopted as proposed in the NPRM.

Proposed rule: Proposed paragraph (b) outlines the minimum procedures that a track owner must adopt to conduct continuous rail testing under § 213.240. Prior to starting a continuous testing program, a track owner must adopt procedures that comply with this section. Rail testing is vital to the prevention of track-caused accidents, and documented procedures are necessary to ensure continuous rail testing works consistently and effectively, and that those involved understand their responsibilities and have a resource they can consult if they have any questions. These minimum procedures are designed to allow each track owner flexibility in determining the best approach to conduct continuous testing. Proposed paragraphs (b)(1) through (5) would require track owners conducting continuous rail testing under § 213.240 to adopt procedures addressing how (1) test data would be transmitted and analyzed; (2) suspect locations would be identified for field verification; (3) suspect locations would be categorized and prioritized according to their potential severity; (4) suspect locations would be field-verified; and (5) suspect locations would be designated following field verification.

Comments: NTSB commented that FRA should provide more information regarding the specifics of the required minimum procedures. Specifically, NTSB states that the ''guidance should discuss the transmittal of testing data, and provide procedures for locating and validating suspected defects, and managing recordkeeping.''

With respect to proposed paragraph (b)(4), which would require the procedures address how suspect locations would be field-verified, BMWED/BRS commented that FRA has failed to articulate what actions must be taken should the field verifier be unable to reproduce the defect signature and that FRA should require suspect

locations ''be validated for 60 feet on either side of the suspect defect.''

Final rule: As discussed in more detail below, and in the NPRM, FRA has intentionally designed the rule to provide track owners flexibility on how to structure their continuous testing procedures, while ensuring certain standards are met. Railroad operations are not uniform and technology changes. Accordingly, FRA seeks to avoid limiting railroads' flexibility to innovate and utilize new technology and approaches as they are developed. However, the procedures track owners adopt must accomplish their purpose. To make this clear in this final rule, FRA is making changes throughout paragraph (b) requiring track owners' minimum procedures adopted under 213.240 to ensure accurate data transmittal, analysis, and conclusions throughout the entirety of the continuous test process. Specifically, FRA is revising proposed paragraph (b)'s introductory text and paragraphs (b)(1), (2), and (4).

First, FRA is revising the last sentence of paragraph (b)'s introductory text to specify that a railroad's continuous testing procedures must conform with the requirements of § 213.240 and ensure the requirements of paragraphs (b)(1) through (5) are met.

FRA is revising proposed paragraph (b)(1) to specify that a track owner's procedures must ensure that test data will be ''timely and accurately'' transmitted and analyzed. Procedures that do not accomplish the timely and accurate transmittal and analysis of the test data will not comply with the requirements of paragraph (b)(1). For example, data integrity must be maintained throughout the collection, analysis, and verification process, and transmitted in a manner and speed sufficient to meet the field-verification timeframes discussed below.

FRA is revising proposed paragraph (b)(2) to make clear that the procedures must ensure suspect locations are ''accurately'' identified for field verification. Procedures that do not result in the accurate identification of suspect locations for field verification will not comply with the requirements of this paragraph (b)(2). For example, the data must reflect the true position of the suspect location and contain sufficient data to allow the field verifier to successfully identify the suspect location. With this change, paragraph (b)(2) is adopted as proposed in the NPRM.

FRA is revising proposed paragraph (b)(4) to make clear that the procedures must ensure suspect locations are ''accurately'' field-verified. As explained in more detail in the NPRM, accurate field verification is vitally important to continuous testing, and rail testing in general, because it is the process by which the track owner determines whether a rail defect exists or not, and if so, how serious. FRA recognizes, however, that defect signatures will always differ to some degree even when the same equipment is used over the same defect. That is the nature of the technology. FRA does not intend to require a railroad to implement procedures that would ensure field verifiers can reproduce exact defect signatures. FRA recognizes this is simply not feasible. FRA also believes that requirements adopted in this final rule cover this issue by requiring track owners to document suspect locations with repeatable accuracy so that they may be located for field verification. However, to emphasize the general point discussed above (*i.e.,* that the procedures adopted by track owners must accomplish their purpose), FRA is revising proposed paragraph (b)(4) to make clear that the procedures must address how suspect locations will be ''accurately'' field-verified. FRA intends the addition of ''accurately'' to more clearly convey the requirement. For example, the procedures must enable the field verifier to locate the suspect location and take appropriate action to determine whether the suspect location contains an actual rail defect. Procedures that do not accomplish the accurate field verification of a suspect location, which would implicitly also require accurately locating that suspect location, will not comply with the requirements of § 213.240(b)(4).

FRA disagrees with BMWED/BRS's comment that it is necessary to require a track owner validate each suspect location for 60 feet on either side. Paragraph (b)(4) requires the track owner have procedures for the effective and accurate field verification of a suspect location. Additionally, paragraph (f) of this section, discussed below, requires that track owners record suspect locations with repeatable accuracy that allows for the location to be accurately located for subsequent verification. Requiring each suspect location to be validated for 60 feet on each side would be redundant and would create a substantial amount of extra, unnecessary work. Additionally, because such a condition would apply only to track owners conducting continuous testing, it would serve as a significant disincentive for railroads to adopt continuous rail testing, because it would apply only to continuous testing and not tradition stop-and-verify testing. Paragraph (b)(4) is therefore adopted as proposed in the NPRM, with the change noted above.

Proposed rule: Proposed paragraph (c) would require the track owner to designate and record the type of rail test to be conducted, whether continuous or stop-and-verify, prior to commencing the testing. As proposed, track owners could elect to conduct continuous testing in conjunction with stop-and-verify rail testing, but a determination would need to be made prior to commencement of the test as to which type of test will be conducted on a given section of track. The decision as to what type of test is being conducted on a given section of track must be properly documented to ensure that the effectiveness of the inspection can be adequately evaluated for efficacy and reporting requirements. If the type of rail testing changes after the test has commenced, FRA proposed to require the track owner to document that change, including the time the test was initially started, the time it was changed, the milepost where the test started, the milepost where the test changed, and the reason for the change. As proposed, these records would need to be made available to FRA upon request during regular business hours following reasonable notice. To conduct oversight and ensure safety, FRA must know the type of test utilized on a section of track, because the type of test will dictate both the necessary procedures and, more importantly, the required time period for field verification of any suspected defects identified.

Additionally, proposed paragraph (c) would require a track owner to designate and document, at least 10 days prior to commencing a continuous rail test, whether the test is being conducted to satisfy the requirement for an internal rail inspection under § 213.237 or § 213.339. As discussed in greater detail above, track owners are required to conduct a sufficient number of internal rail inspections to satisfy the requirements of § 213.237 or § 213.339. Under FRA's proposal, a continuous rail test conducted to meet the minimum number of required internal rail inspections would need to comply with § 213.240, including the field-verification requirements under paragraph (e). Track owners are, of course, permitted to conduct continuous rail tests above and beyond the minimum requirements of § 213.237 or § 213.339. As proposed, those additional rail tests (that are not intended to meet the minimum number required by § 213.237 or § 213.339) would not be

required to meet the field-verification timeframe requirements of § 213.240, and the track owner therefore cannot rely on such tests to demonstrate compliance with either § 213.237 or § 213.339. As proposed, the track owner must designate and record whether the test is being conducted to satisfy the minimum frequency requirements of § 213.237 or § 213.339, at least 10 days in advance of the test to allow FRA the opportunity to oversee the testing and ensure the proper procedures are being followed.

Comments: AAR/ASLRRA request two changes to the proposed rule. First, AAR/ASLRRA state that the proposed 10-day advance designation of whether a continuous test is being conducted to satisfy the minimum frequency requirements of § 213.237, or § 213.339, ''may actually detract from safety by preventing a continuous test run from occurring when an opportunity to conduct such testing arises within the ten-day window.'' Accordingly, AAR/ASLRRA asks that FRA remove the proposed requirement. Second, AAR/ASLRRA oppose the requirement that, when the type of test (continuous or stop-and-verify) changes after a test commences, the track owner must document the reason for the change. AAR/ASLRRA contend that ''the reason a track owner may decide to change a test may be a result of a business decision not within FRA's regulatory purview,'' and that the ''proposal appears to serve no required safety purpose.'' Finally, AAR/ASLRRA comment on the use of the term ''reasonable notice,'' which is discussed in more detail in the section-by-section analysis for § 213.7, above.

Final rule: Whether a continuous test is done to satisfy the inspection frequency required under this part affects what procedures the track owner must follow. Thus, for FRA to conduct effective oversight, and for track owner inspection personnel to know what procedures apply, the track owner must articulate whether the test is being conducted to satisfy the inspection frequency required under part 213. However, FRA agrees that the 10 days' advance notice is unnecessary and could prevent a track owner from conducting a continuous test if the equipment becomes available within the 10-day window. Thus, FRA is not adopting the 10-day notice requirement and instead will require that the track owner designate the type of test prior to the start of the test. This revision will ensure that FRA and track owner personnel know whether the procedures required under this part apply to the test, while addressing AAR/ASLRRA's concern regarding advanced notice.

As for the proposed requirement that a track owner document the reason for a change in the type of test after commencing the rail test, although FRA does not believe it is burdensome, FRA agrees that the information is not vital to FRA's ability to conduct oversight and ensure safety. Accordingly, FRA is not adopting the proposed requirement that a track owner document the reason for such a change. However, the track owner must document the change and include the time the test was started and when it changed, and the milepost where the test started and where it was changed. Further, if a track owner switches from a continuous rail test to a stop-and-verify test, regardless of whether the continuous rail test was being conducted to satisfy the minimum frequency requirements of § 213.237, or § 213.339 where applicable, all requirements of § 213.113 will immediately apply and any suspect locations found during the stop-and-verify test must be field-verified within 4 hours.

See the section-by-section analysis for § 213.7 for FRA's response to AAR/ASLRRA's comment regarding the use of the term ''reasonable notice.'' Paragraph (c) is adopted as proposed in the NPRM, with the changes noted above.

Proposed rule: Proposed paragraph (d) lists required qualifications for certain persons involved in key aspects of the continuous testing program. Proposed paragraph (d)(1) would require operators of continuous rail test vehicles be qualified under § 213.238. Section 213.238 lists the qualification requirements for operators of rail test vehicles conducting stop-and-verify rail testing. FRA proposed that the same qualification requirements apply to operators of continuous test vehicles, stating that, like operators of stop-and-verify test vehicles, operators of continuous test vehicles must ensure that the vehicles conduct a valid search and function as intended, and be capable of interpreting relevant equipment responses and determining that a continuous, valid search has been conducted.

Comments: Herzog Services, Inc. asserts that ''the data collection phase of the Continuous Test Process only requires an operator whose sole function is to ensure the test equipment is functioning properly, and that a valid search for internal defects is being conducted.'' Herzog goes on to state that the ''operator is not performing interpretation of the test data for the purpose of identifying a suspect defect location,'' and that accordingly, the operator need not be qualified under all elements of § 213.238(b), specifically, Herzog asserts that a continuous rail test inspection vehicle operator should not be required to be qualified under § 213.238(b)(3), which requires the operator be trained to ''[i]nterpret equipment responses and institute appropriate action in accordance with the employer's procedures and instructions.''

Final rule: FRA generally agrees with Herzog's comment and, in this final rule, is revising paragraph (d)(1) to require the continuous rail test inspection vehicle operator be qualified under § 213.238, with the exception of § 213.238(b)(3). However, FRA makes clear that if the operator of a continuous rail test inspection vehicle is not fully qualified under § 213.238, including § 213.238(b)(3), then it will not be possible for that inspection to change from a continuous test to a stop-and-verify test, because the operator will not be qualified under § 213.238 to conduct a stop-and-verify test. Paragraph (d)(1) is adopted as proposed in the NPRM, with the changes noted above.

Proposed rule: Proposed paragraph (d)(2) would require that the internal rail inspection data be reviewed and interpreted by a person qualified to interpret the equipment responses. FRA intentionally did not propose specific qualification requirements but instead proposed to leave it up to the track owner to ensure the necessary procedures are in place for its specific system so that the persons reviewing and interpreting the data have been properly trained and tested. As noted in the NPRM, an analyst may not necessarily need to have intimate knowledge of the inner workings of the test equipment, but must be trained on how to properly assess the equipment responses, to determine when a possible rail defect exists and field verification is necessary. Accordingly, the track owner or a designee must have a process in place to ensure all persons responsible for the interpretation of the data are competent and capable of that task. By using the word ''qualified,'' FRA does not simply mean that the track owner has designated an individual as qualified. To be ''qualified,'' the person must be properly trained and tested, and thus possess the necessary knowledge and ability to accurately and competently review and interpret the rail test data and properly identify suspected rail defects.

Comments: FRA received no comments on this proposal.

Final rule: After further review of the proposed language, FRA realizes that by

not incorporating specific training requirements such as in § 213.238 and instead giving track owners flexibility in how to train and qualify, there is no express requirement that the track owner provide relevant training and qualification records to FRA upon request. Although FRA recognizes that track owners would likely maintain records of operators' qualifications to demonstrate compliance with the rule, without such a requirement, FRA would not be able to provide any meaningful oversight of proposed paragraph (d)'s requirement that operators be qualified to interpret the equipment responses. Accordingly, in adopting paragraph (d)(2), FRA is including the following language:

> Each employer of a person qualified to interpret equipment responses shall maintain written or electronic records of each qualification in effect, including the name of the employee, the equipment to which the qualification applies, the date of qualification, and the date of the most recent reevaluation of the qualification, if any. Records concerning these qualifications, including copies of training programs, training materials, and recorded examinations, shall be kept at a location designated by the employer and available for inspection and copying by FRA during regular business hours, following reasonable notice.

This language is consistent with the current requirements of § 213.238. See the section-by-section analysis for § 213.7 above, for FRA's response to AAR/ASLRRA's comment regarding the use of the term ''reasonable notice.'' Paragraph (d)(2) is adopted as proposed in the NPRM, with the changes noted above.

Proposed rule: Proposed paragraph (d)(3) would require that all suspected locations be field-verified by a person qualified under § 213.238. FRA is aware that this is the same qualification required for continuous test vehicle operators and believes that an understanding of the vehicle's systems is necessary to understand the test data accurately, find the suspected location, and field-verify the suspected defect successfully.

Comments: BMWED/BRS assert that track owners should be required to ''maintain and make available to FRA training records identifying persons qualified to perform field-verification tests, the basis for such qualifications, and the type(s) of field-verification instruments they are qualified to operate.''

Final rule: As proposed, paragraph (d)(3) would already require that persons conducting field verification be qualified under § 213.238. Section 213.238(g) itself requires that track owners make qualification and training records available to FRA, and § 213.238(e) requires that track owners keep a list of each qualification in effect, including the name of the employee, the equipment to which the qualification applies, the date of qualification, and the date of the most recent reevaluation. FRA expects that the referenced qualification requirements are sufficient to allow proper oversight and ensure safety. Accordingly, paragraph (d)(3) is adopted as proposed in the NPRM.

Proposed rule: Proposed paragraph (e) would require that the continuous test process, at a minimum, produce a report containing a systematic listing of all suspected locations that may contain any defect listed in the Remedial Action Table. The suspect location must be identified with sufficient information so that a qualified person under § 213.238 can locate and field-verify each suspected defect accurately. FRA intentionally did not prescribe how a suspect location is identified and proposed to leave it up to the track owner because the identification process may be affected by specific circumstances facing each track owner.

FRA notes that when proposed paragraph (e) is read in conjunction with proposed paragraphs (b)(2) and (f), the suspect location must be identified and recorded in a manner that allows the qualified person under § 213.238 to locate the suspect location with repeatable accuracy. This could include using Global Positioning System (GPS) coordinates, but for locations where GPS does not work, such as tunnels, the track owner must have another procedure in place to accurately identify the exact location of the suspected defects. FRA also recognizes that the locations likely cannot be listed with perfect accuracy and that there must be some acceptable margin of error. Although FRA does not quantify the exact size of an allowable margin of error, it cannot be of a size that would affect the ability of the qualified person under § 213.238 to locate the suspected defect noted on the report accurately. For example, if the margin of error is too large, there is a risk that the qualified person may confuse the suspected defect noted on the report with another condition present in or on the rail in the vicinity of the actual suspected defect.

Comments: FRA received no comments on this proposed change.

Final rule: Paragraph (e) is adopted as proposed in the NPRM.

Proposed rule: Proposed paragraphs (e)(1) and (2) contain specific timeframes in which field verification of suspected locations must be conducted. For purposes of the verification timeframes, the indications are classified into two categories: Those suspected defects that, if verified, would require remedial action note ''A,'' ''A2,'' or ''B'' in the Remedial Action Table (addressed in proposed paragraph (e)(2)); and all other defects (addressed in proposed paragraph (e)(1)). Additionally, under proposed paragraph (e)(3), indications of a possible broken rail with rail separation must be protected immediately. Proposed paragraph (e)(1) would require, subject to the requirements of proposed paragraphs (e)(2) and (3), that the track owner field-verify any suspect location within 72 hours after completing the test run, or within 84 hours of the detection of the suspect location, whichever is earlier. This, along with proposed paragraphs (e)(2) and (3), would take the place of the current requirement that suspect locations be field-verified within 4 hours. Proposed paragraph (e)(1) would apply to any suspect location that does not indicate a broken rail with rail separation or indicate a suspected defect that, if verified, requires remedial action note ''A,'' ''A2,'' or ''B'' under the Remedial Action Table. In other words, this proposed paragraph would apply to suspected defects that pose less of an immediate safety risk than the ones covered in proposed paragraphs (e)(2) and (3).

Comments: FRA received multiple comments on this proposal. AAR/ASLRRA assert that having two different time periods ''presents tracking issues that would be difficult and burdensome for railroads to monitor and would introduce unnecessary confusion regarding whether the appropriate time permitted for field verification was met.'' BMWED/BRS further comment that ''completion of the test run'' is ambiguous and FRA should ''provide a clear and unambiguous definition as to when that is.'' For their part, AAR/ASLRRA advocate that track owners have 84 hours from the completion of the test run for field verification.

NTSB comments that the proposed field-verification timeframe could allow ''certain hazardous rail defects . . . to go 'unverified' for longer than 12 hours,'' presenting a ''public safety concern'' and states that FRA should enact ''[p]rocedures for mitigating risks.'' Likewise, the Chemical, Energy, and Agricultural Trade Associations comment that they ''are concerned that the proposed revisions, particularly the extension of the verification timeframes could lead to a scenario where fatal flaws remained unaddressed and subject trains to potential derailments.''

Finally, Herzog notes a typographical error in proposed paragraph (e)(1) wherein it references paragraphs (c)(2) and (3) when it should reference paragraphs (e)(2) and (3). Additionally, Herzog requests that FRA use the term ''indication'' as opposed to ''detection'' in paragraph (e)(1) because the ''collection vehicle is only collecting the test data and the location is an 'indication' at that time.''

Final rule: In adopting this paragraph (e)(1) in the final rule, FRA has corrected the inadvertent typographical error so that paragraph (e)(1) references paragraphs (e)(2) and (3). FRA also agrees that ''indication'' is a more suitable term than ''detection'' and has changed paragraph (e)(1) accordingly. FRA makes clear that a track owner receives the indication of the suspect location, for purposes of the field-verification timeframe, when the collection vehicle passes over the suspect location.

FRA agrees that use of a single time period may allow track owners to more efficiently and accurately track when a suspect location must be field-verified without negatively impacting safety. However, FRA does not agree that this time period should begin upon completion of the test run, because ''completion of the test run'' could be hard to define and raises the possibility that a test run could continue for a lengthy and unpredictable period, potentially resulting in the field-verification clock not starting until after a significant period of time passes. In this final rule, FRA is instead adopting a single timeframe that requires suspect locations be field-verified within 84 hours of their indication, *i.e.,* when the collection vehicle passes over the suspect location. This change will address the concern raised about the different proposed timeframes while also ensuring that suspect locations are field-verified within a defined period of time that is not fluid or dependent on when a test run may end, thereby addressing possible ambiguity as to the meaning of ''completion of the test run.''

As for the concerns raised by NTSB and the Chemical, Energy, and Agricultural Trade Associations, as explained in greater detail above and in the NPRM (*see* 84 FR 72528–30), FRA has trialed continuous rail testing under the waiver process for over a decade and the regulatory changes adopted here are based on the lessons learned and procedures used under the waiver process. FRA is confident, based on the data and experience gained from those waivers, that the field-verification timeframes adopted here are sufficient to ensure safety.

Finally, in adopting paragraph (e)(1), FRA is adding ''Except as provided in paragraph (e)(6) of this section'' to the beginning of the paragraph. This change is meant to account for the addition of paragraph (e)(6), discussed below, codifying the interpretation articulated in the NPRM preamble that the applicable timeframes for field verification apply only to continuous rail tests conducted to meet the minimum inspection frequency required by § 213.237, or § 213.339 where applicable. Paragraph (e)(1) is adopted as proposed in the NPRM, with the changes noted above.

Proposed rule: Proposed paragraph (e)(2) would require that any suspect location containing a suspected defect that, if verified, would require remedial action note ''A,'' ''A2,'' or ''B'' under the Remedial Action Table be field-verified no more than 24 hours after completion of the test run, or 36 hours after detection of the suspect location, whichever is earlier. The remedial action need not be the only required remedial action, just one of those cited. Thus, if remedial action note ''A,'' ''A2,'' or ''B'' is cited in the remedial action column (the last column) of the Remedial Action Table, the defects associated with those remedial actions would be covered under proposed paragraph (e)(2) and any suspect location possibly containing one of those defects must be field-verified within the time required by proposed paragraph (e)(2). Based on the table in § 213.113(c), the covered defects include:

- All compound fissures;
- Transverse fissures 60 percent or greater;
- Detail fractures 60 percent or greater;
- Engine burn fractures 60 percent or greater;
- Defective welds 60 percent or greater;
- Horizontal split head greater than 4 inches or where there is a break out in the rail head;
- Vertical split head greater than 4 inches or where there is a break out in the rail head;
- Split web greater than 4 inches or where there is a break out in the rail head;
- Piped rail greater than 4 inches or where there is a break out in the rail head;
- Head web separation greater than 4 inches or where there is a break out in the rail head;
- Defective weld greater than 4 inches or where there is a break out in the rail head;
- Bolt hole crack greater than 1.5 inches or where there is a break out in the rail head;
- Broken base greater than 6 inches; and
- Ordinary breaks.

Comments: The same comments discussed above for paragraph (e)(1) are applicable here. See the above summary.

Final rule: Please see the relevant FRA responses to the comments above on paragraph (e)(1). For the reasons discussed above, in adopting the final rule, paragraph (e)(2) uses the term ''indication'' instead of ''detection''; does not reference ''completion of the test run''; and requires field verification within 36 hours of the indication, *i.e.,* within 36 hours of the collection car passing over the suspect location.

Consistent with the change in paragraph (e)(1), FRA is also making an additional change by adding ''Except as provided in paragraph (e)(6) of this section'' to the beginning of paragraph (e)(2). This change is meant to account for the addition of paragraph (e)(6), discussed below, codifying the interpretation articulated in the NPRM preamble that the applicable timeframes for field verification apply only to continuous rail tests conducted to meet the minimum number required by § 213.237, or § 213.339 where applicable. Finally, FRA is making a further change by adding ''and subject to the requirement of paragraph (e)(3)'' to make paragraph (e)(2) clearer and consistent with (e)(1). Paragraph (e)(2) is adopted as proposed in the NPRM, with the changes noted above.

Proposed rule: Proposed paragraph (e)(3) would require that track owners have procedures in place to ensure adequate protection is immediately implemented when continuous rail test inspection vehicles indicate a possible broken rail with rail separation. As explained in the NPRM, FRA intentionally does not specify what needs to be included in the procedures but expects the track owners to determine what is appropriate for their individual operations. At a minimum, these procedures would need to include specific communication channels, open at all times continuous rail testing is conducted and data is being analyzed, among the personnel who can take the necessary steps to implement adequate protection immediately. A track owner may not wait until the suspected broken rail with rail separation is field-verified. The visual indication received by the analyst alone is sufficient.

Comments: FRA received no comments on this proposed change.

Final rule: Paragraph (e)(3) is adopted as proposed in the NPRM.

Proposed rule: Proposed paragraph (e)(4) states that a suspect location is not considered an actual rail defect under § 213.113(c) until it has been field-verified by a person qualified under § 213.238. Thus, as proposed, a track owner would not be required to implement the remedial actions listed in the Remedial Action Table until a suspect location is field-verified, or, as provided in proposed paragraph (e)(5), the required time period to conduct field verification has elapsed. Proposed paragraph (e)(4) goes on to state that once a suspect location is field-verified and determined to be a defect, the track owner must immediately perform all remedial actions required by § 213.113(a).

Comments: FRA received no comments on this proposed change.

Final rule: FRA notes that the inclusion of paragraph (e)(4) is simply the codification of an existing FRA interpretation regarding rail inspections. Under § 213.113, an indication of a suspect location is not considered a defect, and thus the track owner is not required to take remedial action, until the suspect location is field-verified and an actual defect is found. Paragraph (e)(4) is adopted as proposed in the NPRM.

Proposed rule: Under proposed paragraph (e)(5), if a suspect location is not field-verified within the time required by proposed paragraph (e)(1) or (2), it must be immediately protected by applying the most restrictive remedial action in the Remedial Action Table for the suspected type and size of the suspected defect. The protection must cover a sufficient segment of track to assure coverage of the suspected location until field verification. Thus, if the size of a defect is not immediately clear, the protection must provide a safety margin and cover a larger segment of track to ensure the limits of the suspected defect are included in the protection.

Comments: FRA received no comments on this proposed change.

Final rule: Paragraph (e)(5) is adopted as proposed in the NPRM.

Proposed rule: In the NPRM preamble, FRA stated that a continuous rail test conducted to meet the minimum number of required internal rail inspections under § 213.237, or § 213.339 where applicable, also called regulatory tests, must comply with § 213.240. FRA further explained that continuous rail tests conducted above and beyond the minimum frequency requirements of § 213.237, or § 213.339 where applicable, or on track not required to be tested under § 213.237, or § 213.339 where applicable, *i.e.,* non-regulatory tests, are not required to meet all requirements of § 213.240.

Comments: BMWED/BRS assert there should be no difference between the rules applicable to regulatory and non-regulatory tests. According to BMWED/BRS, time limits for remedial action, field verification, and inspection records should apply to every continuous test regardless whether it is conducted to meet the minimum number of required internal rail inspections under § 213.237, or § 213.339 where applicable. BMWED/BRS contend that not requiring non-regulatory tests to comply with § 213.240 means that track owners ''will be given 'carte blanche' by FRA to delay verification and protection of suspected rail defects indefinitely.''

AAR/ASLRRA request clarification on FRA's discussion in the NPRM on regulatory and non-regulatory tests. AAR/ASLRRA ''understand this to mean that when track owners proactively choose to conduct additional continuous tests that are not intended to fulfill the Federally required [track safety standards (TSS)] inspection requirements, that associated TSS testing intervals and deadlines, and data collection and other administrative requirements do not apply to the conduct of those tests.''

In addition, NTSB believes that the proposed regulatory text may not accomplish what FRA intended by its preamble discussion, stating that proposed § 213.240 would only exempt track owners from the 4-hour field-verification timeframe in § 213.113(b) if the continuous test is conducted under the procedures listed in § 213.240.

Final rule: FRA agrees with NTSB that the proposed rule, as written, may not accomplish effectively what was intended. Thus, FRA is adding paragraph (e)(6), which states: ''A continuous rail test that is not conducted to satisfy the requirements for an internal rail inspection under § 213.237, or § 213.339 if applicable, and has been properly designated and recorded by the track owner under paragraph (c) of this section, is exempt from the requirements of paragraphs (e)(1), (2), and (5) of this section.''

This new paragraph also responds to the comment submitted by AAR/ASLRRA. A non-regulatory test is exempt only from the required timeframes for field verification. The track owner must still comply with all other regulatory requirements under this part, including recordkeeping, data collection, procedural, and reporting requirements.

FRA agrees with BMWED/BRS that the time limits for implementing remedial actions under § 213.113(a) apply to all tests, whether regulatory or non-regulatory, once a suspect location is field-verified and a defect is found. However, FRA does not agree that such suspect locations identified during non-regulatory tests should be subject to the same field-verification timeframes. Doing so would create a disincentive for track owners to conduct continuous tests above and beyond the minimum requirements, including on track where rail inspections are not required, such as yard track. Further, by not imposing the rule's field-verification timeframes on suspect locations found during non-regulatory tests, track owners have greater flexibility to prioritize field verification of suspect locations that pose a higher risk of derailment. Although the final rule allows track owners to leave some suspected defects in certain track, FRA expects it will result in track owners conducting tests where they otherwise would not, and ultimately result in more rail defects being found and remediated. Accordingly, paragraph (e)(6) is adopted as stated above.

Proposed rule: Proposed paragraph (f) would require each suspect location be recorded with repeatable accuracy so that the location can be accurately located for subsequent field verification and remedial action. As the continuous testing process allows track owners to conduct field verifications well after the inspection equipment traverses a track segment, it is critical that each suspect location be dependably and accurately identified. Recording each suspect location with this repeatable accuracy is a cornerstone of the entire process, and can be accomplished through a variety or combination of methods, including use of GPS and measuring from known reference points. When GPS is used, procedures must be adopted that allow field-verifiers to accurately find those suspect locations in areas where the signals for GPS are compromised or otherwise rendered unreliable, such as in tunnels, cut sections, or near buildings. When determining the appropriate procedures to follow, track owners should be particularly mindful of scenarios in which GPS is unreliable and few track features exist for reference, such as can result from some rail that is rolled in weld-free segments that exceed one-tenth of a mile in length.

Comments: FRA received no comments on this proposed change.

Final rule: Paragraph (f) is adopted as proposed in the NPRM.

Proposed rule: Proposed paragraph (g) would require track owners utilizing continuous rail testing to submit an annual report to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer no later than 45 days following the end of each calendar year. This would apply only to track owners that have conducted continuous rail testing under § 213.240 within the previous calendar year. Continuous testing programs have been trialed through temporary waivers granted to several railroads throughout the country; however, it is important to continue monitoring the overall impacts and efficacy of the process. This proposed reporting requirement is designed to provide sufficient data to enable a comparison of the results and effectiveness of continuous rail testing to the results and effectiveness of inspections by track owners not utilizing continuous rail testing. The annual report will also allow FRA to monitor the effectiveness of individual track owners' specific continuous testing processes and programs, and compare results on a micro level for specific track owners. Further, as innovation and technology evolve, it is critical to the success of the safety improvement process to collect and analyze this data for positive trend exploration.

FRA will use the data provided in each track owner's annual report to match service failure rates with testing frequencies to estimate the correlation between increased testing frequencies to the accident rate. This will help confirm that the anticipated safety improvements are realized. In addition, FRA intends to utilize traditional and new methods of analysis to, among other things, study defect risk and track health and will share data with the track owners to inform continuous process improvement, as was done during the waiver process for continuous rail testing. The information should also serve as valuable input to FRA's ongoing research on potential commonalities in rail geometry and rail defect growth patterns, to aid the industry in its continuous effort to mitigate the risk of track-caused derailments.

The annual report must be in a reasonably usable format, or its native electronic format, and contain at least all the information required by proposed paragraphs (g)(1) through (10) for each track segment requiring internal rail inspection under either § 213.237 or § 213.339. Specifically, the submission must include the track owner's name ((g)(1)); the name of the railroad division and subdivision ((g)(2)); the segment identifier, milepost limits, and length of each segment ((g)(3)); the track number ((g)(4)); the class of track ((g)(5)); the annual million gross tons over that segment of track ((g)(6)); the total number of internal rail tests conducted over each track ((g)(7)); the type of internal rail test conducted on the segment, whether continuous rail test or stop-and-verify ((g)(8)); and the total number of defects identified over each track segment ((g)(9)), which would include only the defects that have been field-verified and determined to be actual defects. Proposed paragraph (g)(10) would also require the total number of service failures on each track segment.

This information is necessary for FRA to ensure safe operations and monitor the effectiveness of continuous rail testing and the requirements of this regulation. For FRA to fulfill its responsibilities to oversee railroad safety and the implementation of continuous testing, the agency must receive sufficient data to effectively perform its functions, while not placing undue burden on the industry. Accordingly, the annual reporting requirement is intended to provide FRA with information needed to ensure that the continuous testing process is consistently carried out in a proper manner.

Comments: AAR/ASLRRA ask for clarification on the intended meaning of ''service failure'' as used in proposed paragraph (g)(10) and whether it is meant to be defined the same as in § 213.237(j)(3). In commenting, NTSB asserts that ''to more effectively monitor the programs, the proposed regulation should require separately listing the quantity of each type of internal rail test on each segment.'' NTSB also suggests the regulation include ''[p]rocedures for monitoring rail inspection program,'' indicating that allowance of ''multiple rail inspection processes on a given segment in a given year . . . could be more complex to monitor.''

Final rule: FRA is confident the annual reporting requirement under paragraph (g), together with FRA's general oversight authority, is sufficient to monitor the safety and effectiveness of track owners' rail inspection programs. FRA agrees that requiring a listing of the quantity and type of each rail inspection on a segment is vitally important information and proposed paragraphs (g)(7) and (8) to accomplish that. To make this intent clearer, FRA is combining proposed paragraphs (g)(7) and (8) into paragraph (g)(7) to read: ''The total number of stop-and-verify rail tests and the total number of continuous rail tests over each track segment.'' In conformance with this change, FRA has renumbered proposed paragraphs (g)(9) and (10) as paragraphs (g)(8) and (9) in this final rule.

Finally, FRA confirms the term ''service failure'' as used in proposed paragraph (g)(10), now paragraph (g)(9), is intended to have the same meaning as in § 213.237(j)(3). Paragraph (g) is adopted as proposed in the NPRM, with the changes noted above.

Section 213.241 Inspection Records

Proposed rule: Section 213.241 requires track owners to keep a record of each inspection required to be performed under part 213, subpart F. Paragraph (b) of this section requires that each record of inspection under certain sections include specific information, be prepared on the day the inspection is made, and be signed by the person making the inspection. FRA proposed revising paragraph (b) by adding § 213.137 to those enumerated sections for which inspection records must comply with the requirements of paragraph (b), because of the incorporation of the waiver allowing the use of FBFs. One of the proposed requirements for the use of FBFs under § 213.137(e)(3) is that they must be inspected at specific intervals, records of which must be kept and comply with § 213.241(b).

FRA also proposed adding the phrase ''or otherwise certified'' after ''signed'' in paragraph (b), and thus require that records be ''signed or otherwise certified by the person making the inspection.'' This is meant to clarify that a record does not have to be physically signed by the person making the inspection. The track owner can choose to use other methods to allow an inspector to certify an inspection record, provided the method chosen accurately and securely identifies the person making the inspection. Further, FRA proposed adding three elements to the list of information that must be included in an inspection record: The author of the record, the type of track inspected, and the location of the inspection. FRA expects this information is already included in most, if not all, of the inspection records currently prepared by the railroad industry. The proposal is therefore intended to emphasize the importance of this information and should have little, if any, impact on recordkeeping practices. The remaining edits to paragraph (b) are simply technical edits that have no effect on the intent of the paragraph. Specifically, FRA would change ''owner'' to ''track owner'' at the beginning of the last two sentences, remove ''either'' before the word ''maintained'' in the last sentence,

and change ''10 days notice'' to ''10 days' notice.''

Comments: FRA received no comments on the proposed changes to paragraph (b).

Final rule: FRA is not adopting the proposed reference to § 213.137 in § 213.241(b). FRA had originally considered adopting the increased inspection frequency for FBFs included in the long-standing waiver but decided against that approach. Because FBFs are inspected in the same manner as other frogs in this final rule, a reference to § 213.137 is not needed. Section 213.241(b) is adopted as proposed in the NPRM, with the change noted above.

Proposed rule: FRA proposed revising paragraph (f) and redesignating it as paragraph (i) and adding new paragraph (f). Proposed paragraph (f) would list the recordkeeping requirements for continuous testing performed under § 213.240. These are similar to the current recordkeeping requirements for internal rail inspections conducted under § 213.237. Proposed paragraph (f)(1) would require the track owner's continuous rail testing records include all information required under § 213.240(e). Broadly, this would require the track owner to produce a report containing a systematic listing of all suspected locations, and is explained in greater detail above. Proposed paragraph (f)(2) would require that the records state whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.237. As discussed in more detail above, this is necessary information because it is relevant to whether the track owner must comply with the field-verification time limits in § 213.240(e). Proposed paragraph (f)(3) would require that the continuous rail testing records include the date and time of the beginning and end of each continuous test run, as well as the date and time each suspect location was identified and field-verified. Proposed paragraph (f)(4) would require that the continuous testing records include the determination made for each suspect location after field verification (including, at a minimum, the location and type of defect, the size of the defect, and the initial remedial action taken, if required, and the date of that remedial action). Finally, proposed paragraph (f)(5) would require that these records be kept for two years from the date of the inspection, or one year after initial remedial action, whichever is later.

Comments: FRA received no comments on these proposed changes.

Final rule: Paragraph (f) is adopted as proposed in the NPRM.

Proposed rule: Proposed paragraph (g) is similar to paragraph (e). As proposed, the paragraph would require any track owner that elects to conduct continuous testing under § 213.240 to maintain records sufficient for monitoring and determining compliance with all applicable regulations and make those records available to FRA during regular business hours following reasonable notice. For example, as proposed, a track owner must keep sufficient records of procedures developed to comply with § 213.240(b), as well as qualification procedures under § 213.238. The meaning of the term ''reasonable notice'' would depend on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

Comments: AAR/ASLRRA's comment on the use of the term ''reasonable notice'' is discussed in more detail in the section-by-section analysis for § 213.7, above.

Final rule: See the section-by-section analysis for § 213.7 for FRA's response to AAR/ASLRRA's comment regarding the use of the term ''reasonable notice.'' Paragraph (g) is adopted as proposed in the NPRM.

Proposed rule: Proposed paragraph (h) states that track inspection records, meaning each inspection record created under § 213.241, shall be available to persons who performed the inspections and to persons performing subsequent inspections of the track segment. This is vitally important to help ensure the quality and effectiveness of track inspections, and FRA expects that in most cases this is already being done, as it is required, at least for electronic inspection records, under existing § 213.241(g)(7). A person performing a subsequent inspection must have an understanding of the track condition during previous inspections to effectively recognize significant changes in the track condition as well as ensure that previously noted defects are adequately protected, have been adequately remediated, or have not degraded to a degree that requires further action.

Comments: FRA received no comments on this proposed change.

Final rule: Paragraph (h) is adopted as proposed in the NPRM.

Proposed rule: FRA proposed paragraph (i) to be redesignated as paragraph (f) and revised to include the phrase ''during regular business hours following reasonable notice'' at the end of the paragraph. The meaning of the term ''reasonable notice'' would depend on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

Comments: AAR/ASLRRA's comment on the use of the term ''reasonable notice'' is discussed in more detail in the section-by-section analysis for § 213.7, above.

Final rule: See the section-by-section analysis for § 213.7 for FRA's response to AAR/ASLRRA's comment regarding the use of the term ''reasonable notice.'' Paragraph (i) is adopted as proposed in the NPRM.

Proposed rule: FRA proposed paragraph (j) to be a revised and redesignated version of existing paragraph (g). First, FRA proposed to reword the introductory language of the paragraph to make it clearer that a track owner may create, retain, transmit, store, and retrieve records by electronic means for purposes of complying with this section. The proposed change is not meant to affect the meaning or intent of this paragraph.

Next, in redesignating paragraph (g) as paragraph (j), FRA would remove existing paragraphs (g)(5) through (7). Existing paragraph (g)(1) would be redesignated as paragraph (j)(3), existing paragraph (g)(2) would be redesignated as paragraph (j)(5), and existing paragraph (g)(3) would be redesignated as paragraph (j)(4). Proposed new paragraphs (j)(1) and (2) would be added. FRA finds the proposal would help ensure the integrity of electronic records, while increasing clarity and allowing track owners additional flexibility without negatively impacting safety.

Under proposed paragraph (j)(1), the system used to generate the electronic records must meet all the requirements and include all the information required under subpart F. Proposed paragraph (j)(2) would require the track owner to monitor its electronic records database to ensure record accuracy, and FRA would intentionally leave it up to the track owner to determine the best way to monitor, protect, and maintain the integrity and accuracy of its records database effectively. FRA proposed that existing paragraph (g)(1) be redesignated as paragraph (j)(3) and revised to require that the electronic system be designed to identify the author of each record uniquely and prohibit two persons from having the same electronic identity. This is a simplified rephrasing of the requirements of existing paragraph (g)(1).

FRA proposed that existing paragraph (g)(3) be redesignated as paragraph (j)(4) and slightly revised. Proposed paragraph (j)(4) would require that the electronic system ensure each record cannot be modified or replaced in the system once the record is completed. Proposed paragraph (j)(4) would

prohibit modification once the record is completed, while existing paragraph (g)(3) prohibits modification once the record is transmitted and stored. FRA recognizes that there are times when an inspection record may include information that cannot be entered until a later date, such as the date of final repair. Proposed paragraph (j)(4) would, therefore, allow for modification of a record, provided the modification is made by the original author of the record or the author of the modification is identified in the record, after the record has been transmitted but before the record has been fully completed. This would not permit someone other than the author of the record to modify existing information at a later date, such as track measurements or listings of reported defects.

FRA proposed that existing paragraph (g)(2) be redesignated as paragraph (j)(5) and revised to require that electronic storage of records be initiated by the person making the inspection within 72 hours following completion of the inspection. Existing paragraph (g)(2) requires that electronic storage be initiated within 24 hours of completion of the inspection. FRA finds that giving track owners an additional 48 hours to upload inspection records would provide needed flexibility without negatively impacting safety. For example, where an inspector does not have internet connection or experiences computer failure, it may take more than 24 hours to upload the inspection report. The new 72-hour requirement would also take into account the possibility of technical issues occurring late on a Friday that cannot be remedied until the following Monday, due to limited availability of technical support personnel.

FRA proposed removing existing paragraph (g)(5), which requires that the electronic system provide for maintenance of the inspection records without corruption or loss of data. FRA finds that proposed paragraph (j)(2), which would require that the track owner monitor the database to ensure record accuracy, would make existing paragraph (g)(5) redundant. FRA also proposed removing as redundant existing paragraph (g)(6), which generally requires that track owners make paper copies of electronic records available to FRA. Existing paragraph (f) already requires track owners to make records available to FRA for inspection and copying upon request, and would continue to do so as redesignated paragraph (i). Finally, FRA proposed removing existing paragraph (g)(7), which requires electronic track inspection records to be kept available to persons who performed the inspections and to persons performing subsequent inspections. FRA finds removal is justified because the addition of proposed paragraph (h) would require the same for all records, and therefore make the paragraph redundant.

Comments: FRA received no comments on the proposed changes to § 213.241.

Final rule: Section 213.241 is revised as proposed in the NPRM.

Section 213.305 Designation of Qualified Individuals; General Qualifications

Proposed rule: Proposed revisions to this section are intended to mirror the relevant proposed revisions to § 213.7, discussed above. Section 213.305 addresses the qualification of individuals responsible for the maintenance and inspection of Class 6 and above track. Currently, paragraphs (a)(3), (b)(3), and (c)(4) each require that a qualified person ''[b]e authorized in writing'' or possess ''[w]ritten authorization from the track owner.'' Although FRA expects that the term ''written'' and ''in writing'' can be interpreted to encompass both physical hardcopies of an authorization as well as electronic versions, to avoid any possible confusion FRA proposed to remove the terms ''written'' and ''in writing.'' These changes would make clear that the required authorizations under these paragraphs may be recorded and conveyed either in hardcopy or electronic form.

Further, FRA proposed to revise and reorganize paragraph (e) to clarify the type of information track owners must include in their records of designations made under paragraphs (a) through (d). First, for the reasons stated above, the term ''written'' would be removed. Records of designations made under § 213.305 can be either in physical or electronic form. FRA proposed to add new paragraph (e)(2) to require records of designations include the date each designation was made. The date of an individual's designation is relevant and important information both to the track owner and to FRA, and FRA expects most, if not all, track owners already include this in their designation records. To incorporate this proposed revision, existing paragraph (e)(2) would be redesignated as paragraph (e)(3).

FRA also proposed to remove the first sentence of existing paragraph (e)(3), because it is redundant when considering the requirements of § 213.369. The second sentence of existing paragraph (e)(3) would be redesignated as paragraph (f) and revised. As under the existing regulation, a track owner would be required to make the records kept under paragraph (e) available for inspection and copying by FRA. FRA proposed rephrasing the sentence to require that FRA make its request for records during normal business hours and give the track owner ''reasonable notice'' before requiring production. The meaning of the term ''reasonable notice'' would depend on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

Comments: AAR/ASLRRA's comment on the use of the term ''reasonable notice'' is discussed in more detail in the section-by-section analysis for § 213.7, above.

Final rule: See the section-by-section analysis for § 213.7 for FRA's response to AAR/ASLRRA's comment regarding the use of the term ''reasonable notice.'' Additionally, FRA has identified a technical error in paragraphs (a)(3), (b)(3), and (c)(4) and will change ''successful completion of'' to ''successfully completed.'' This change is not meant to alter the intent or meaning of the section. Accordingly, § 213.305 is revised as proposed in the NPRM, with the changes noted above.

Section 213.365 Visual Track Inspections

Proposed rule: FRA proposed revisions to this section intended to mirror the relevant proposed revisions to § 213.233, discussed above. FRA first proposed to revise the heading for § 213.365 by adding the word ''track'' after ''visual'' so that the heading reads ''Visual track inspections.'' Because other sections in part 213 cover different types of inspections (*e.g.,* automated inspections, inspections of rail, etc.), the proposed heading change is simply intended to clarify that this section deals specifically with visual track inspections. This proposal would also make the heading for § 213.365 consistent with the proposed revision to the heading for the corresponding non-high-speed track section, § 213.233. As discussed above, FRA proposes to revise the heading for § 213.233 so that the headings are the same for both §§ 213.233 and 213.365.

FRA also proposed revising paragraph (b) to change the terms ''riding over'' and ''passing over'' to ''traversing,'' and ''is riding'' and ''are riding'' to ''traverses'' and ''traverse.'' Additionally, FRA proposed changing ''is actually'' to ''must be'' in paragraph (b)(3). These changes are not meant to affect the meaning of § 213.365, but instead are made for grammatical consistency.

FRA proposed removing the last sentence of paragraph (b)(3), also known as the high-density commuter line exception. It was FRA's understanding that no railroads currently utilize this exception. Paragraph (b)(3) requires, among other things, that each main track be traversed by a vehicle or inspector on foot at least once every two weeks, and every siding at least every month. The high-density commuter line exception applies where track time does not permit on-track vehicle inspection and where track centers are 15 feet or less apart and exempts those operations from the inspection method requirements of paragraph (b)(3). FRA's proposal to remove this exception is consistent with NTSB recommendation R–14–11, section 11409 of the FAST Act, and the proposal to remove the counterpart to this section in § 213.233(b)(3), as discussed above in the section-by-section analysis for § 213.233(b)(3) and in section IV.B.i of the NPRM (*see* 84 FR 72530).

Comments: FRA received a comment from AAR/ASLRRA objecting to the removal of the high-density commuter line exception. For a more complete summary of the comment, please see the discussion in the section-by-section analysis for § 213.233(b)(3), above.

Final rule: FRA has decided to adopt the proposal in the NPRM to remove the high-density commuter line exception from part 213, as explained in the section-by-section analysis for § 213.233(b)(3). Paragraph (b) is revised as proposed in the NPRM.

Proposed rule: FRA proposed two revisions to paragraph (c). First, FRA proposed to add the word ''visual'' before ''track inspection'' in the introductory text. This would simply make paragraph (c) consistent with the heading for § 213.365 and would have no effect on the meaning of paragraph (c). Second, FRA proposed adding footnote 1 after the word ''weekly'' in the table in paragraph (c). The footnote defines the term ''weekly'' to be any seven-day period beginning on Sunday and ending on Saturday. This definition is consistent with FRA's past interpretation and enforcement practice.

Comments: FRA received no comments on these proposed changes.

Final rule: Paragraph (c) is revised as proposed in the NPRM.

Proposed rule: FRA also proposed to revise paragraph (d). Specifically, FRA would add the phrase ''the § 213.305 qualified'' at the beginning of the paragraph to clarify that ''the person'' making the inspection that the existing rule text refers to is the qualified track inspector designated under § 213.305. Additionally, FRA proposed adding a sentence at the end of paragraph (d) stating that any subsequent movements to facilitate repairs on track that is out of service must be authorized by a § 213.305 qualified person. This section is silent as to whether or when movement over track that is out of service is permissible. FRA recognizes that certain movements are necessary to facilitate repairs and therefore does not interpret or enforce the regulatory language to bar such movements of equipment and materials on track that is out of service. The proposed revision is meant to embody that practice and interpretation and prevent possible confusion.

Comments: FRA received no comments on these proposed changes.

Final rule: Paragraph (d) is revised as proposed in the NPRM.

Section 213.369 Inspection Records

Proposed rule: Proposed revisions are intended to mirror the relevant proposed revisions to § 213.241, discussed above. FRA proposed adding the phrase ''or otherwise certified'' after ''signed'' in paragraph (b), and thus require that records be ''signed or otherwise certified by the person making the inspection.'' This is meant to clarify that a record does not have to be physically signed by the person making the inspection. The track owner can choose to use other methods to allow an inspector to certify an inspection record, provided that the method chosen accurately and securely identifies the person making the inspection.

Next, FRA proposed to add three elements to the list of information that must be included in an inspection record: The author of the record, the type of track inspected, and the location of the inspection. FRA expects this information is already included in most, if not all, of the inspection records currently prepared by the railroad industry. The proposal is therefore intended to emphasize the importance of this information and should have little, if any, impact on recordkeeping practice. The remaining edits to paragraph (b) are simply technical edits that have no effect on the intent or effect of the paragraph. Specifically, FRA would change ''owner'' to ''track owner'' at the beginning of the last two sentences. FRA would also remove ''either'' before the word ''maintained'' in the last sentence and change ''10 days notice'' to ''10 days' notice.''

Comments: FRA received no comments on these proposed changes.

Final rule: Paragraph (b) is therefore revised as proposed in the NPRM.

Proposed rule: FRA proposed redesignating paragraphs (d), (e), and (f) as paragraphs (g), (h), and (i), respectively, and revising them, and adding new paragraphs (d), (e), and (f). Proposed paragraph (d) would list the recordkeeping requirements for continuous testing performed under § 213.240. These are similar to the current recordkeeping requirements for internal rail inspections conducted under § 213.339. Proposed paragraph (d)(1) would require the track owner's continuous rail testing records include all information required under proposed § 213.240(e). Broadly, this would require the track owner to produce a report containing a systematic listing of all suspected locations, and is explained in greater detail above. Proposed paragraph (d)(2) would require that the records state whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.339. As discussed in more detail above, this is necessary information because it is relevant to whether the track owner must comply with the field-verification time limits in proposed § 213.240(e). Proposed paragraph (d)(3) would require that the continuous rail testing records include the date and time for the beginning and end of each continuous test run, as well as the date and time each suspect location was identified and field-verified. Proposed paragraph (d)(4) would require that the continuous testing records include the determination made for each suspect location after field verification (including, at a minimum, the location and type of defect, the size of the defect, and the initial remedial action taken, if required, and the date thereof). Finally, proposed paragraph (d)(5) would require that these records be kept for two years from the date of the inspection, or one year after initial remedial action, whichever is later.

Comments: FRA received no comments on these proposed changes.

Final rule: Paragraph (d) is revised as proposed in the NPRM.

Proposed rule: Proposed paragraph (e) would require any track owner that elects to conduct continuous testing under § 213.240 to maintain records sufficient for monitoring and determining compliance with all applicable regulations and make those records available to FRA during regular business hours following reasonable notice. For example, the track owner must keep sufficient records of procedures developed to comply with § 213.240(b), as well as qualification procedures under § 213.238. The meaning of the term ''reasonable notice'' would depend on the specific facts of

each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

Comments: AAR/ASLRRA's comment on the use of the term ''reasonable notice'' is discussed in more detail in the section-by-section analysis for § 213.7, above.

Final rule: See the section-by-section analysis for § 213.7 for FRA's response to AAR/ASLRRA's comment regarding the use of the term ''reasonable notice.'' Paragraph (e) is revised as proposed in the NPRM.

Proposed rule: Proposed paragraph (f) states that track inspection records, meaning each inspection record created under § 213.369, shall be available to persons who performed the inspections and to persons performing subsequent inspections of the track segment. This is vitally important to ensure the quality and effectiveness of track inspections, and FRA expects that in most cases this is already being done, as it is required, at least for electronic inspection records, under existing § 213.369(e)(7). A person performing a subsequent inspection must have an understanding of the track condition during previous inspections to recognize significant changes in the track condition effectively as well as ensure that previously noted defects are adequately protected, have been adequately remediated, or have not degraded to a degree that requires further action.

Comments: FRA received no comments on this proposed change.

Final rule: Paragraph (f) is revised as proposed in the NPRM.

Proposed rule: As noted above, FRA proposed redesignating existing paragraph (d) as paragraph (g), and revising it, principally by adding to the end of the paragraph ''upon request during regular business hours following reasonable notice.'' The meaning of the term ''reasonable notice'' would depend on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

Comments: AAR/ASLRRA comment on the use of the term ''reasonable notice,'' which is discussed in more detail in the section-by-section analysis for § 213.7, above.

Final rule: See the section-by-section analysis for § 213.7 for FRA's response to AAR/ASLRRA's comment regarding the use of the term ''reasonable notice.'' Paragraph (g) is adopted as proposed in the NPRM.

Proposed rule: FRA also proposed redesignating existing paragraph (e) as paragraph (h), and revising it. First, FRA first proposed to reword the introductory language of existing paragraph (e) to make it clearer that a track owner may create, retain, transmit, store, and retrieve records by electronic means for purposes of complying with this section. The proposed change is not meant to affect the meaning or intent of this paragraph. Further, in redesignating paragraph (e) as paragraph (h), FRA would remove existing paragraphs (e)(5) through (7). Existing paragraph (e)(1) would be redesignated as paragraph (h)(3), existing paragraph (e)(2) would be redesignated as paragraph (h)(5), and existing paragraph (e)(3) would be redesignated as paragraph (h)(4). Proposed new paragraphs (e)(1) and (2) would be added. FRA finds the proposal would help ensure the integrity of electronic records, while increasing clarity and allowing track owners additional flexibility without negatively impacting safety.

Under proposed paragraph (h)(1), the system used to generate the electronic records must meet all the requirements and include all the information required under subpart G. Proposed paragraph (h)(2) would require the track owner to monitor its electronic records database to ensure record accuracy, and FRA would leave it up to the track owner intentionally to determine the best way to effectively monitor, protect, and maintain the integrity and accuracy of its records database. FRA proposed that existing paragraph (e)(1) be redesignated as paragraph (h)(3) and revised to require that the electronic system be designed to uniquely identify the author of each record and prohibit two persons from having the same electronic identity. This is a simplified rephrasing of the requirements of existing paragraph (e)(1).

FRA proposed that existing paragraph (e)(3) be redesignated as paragraph (h)(4) and slightly revised. Proposed paragraph (h)(4) would require that the electronic system ensures each record cannot be modified or replaced in the system once the record is completed. The one meaningful change is that proposed paragraph (h)(4) would prohibit modification once the record is completed, while existing paragraph (e)(3) prohibits modification once the record is transmitted and stored. FRA recognizes that there are times when an inspection record may include information that cannot be entered until a later date, such as the date of final repair. Proposed paragraph (h)(4) would therefore allow for modification of a record, provided the modification is made by the original author of the record or the author of the modification is identified in the record, after the record has been transmitted but before the record has been fully completed. This would not permit someone other than the author of the record to modify existing information at a later date, such as track measurements or listings of reported defects.

FRA proposed that existing paragraph (e)(2) be redesignated as paragraph (h)(5) and revised to require that electronic storage of records be initiated by the person making the inspection within 72 hours following completion of the inspection. Existing paragraph (e)(2) requires that electronic storage be initiated within 24 hours of completion of the inspection. FRA finds that giving track owners an additional 48 hours to upload inspection records would provide needed flexibility without negatively impacting safety. For example, where an inspector does not have internet connection or experiences computer failure, it may take more than 24 hours to upload the inspection report. The new 72-hour requirement would also take into account the possibility of technical issues occurring late on a Friday that cannot be remedied until the following Monday, due to limited availability of technical support personnel.

FRA proposed removing existing paragraph (e)(5), which requires that the electronic system provide for maintenance of the inspection records without corruption or loss of data. FRA finds that proposed paragraph (h)(2), which would require that the track owner monitor the database to ensure record accuracy, would make existing paragraph (e)(5) redundant. FRA also proposed removing as redundant existing paragraph (e)(6), which generally requires that track owners make paper copies of electronic records available to FRA. Existing paragraph (d) already requires track owners to make records available to FRA for inspection and copying upon request, and would continue to do so as redesignated paragraph (g). Finally, FRA proposed removing existing paragraph (e)(7), which requires electronic track inspection records to be kept available to persons who performed the inspections and to persons performing subsequent inspections. FRA finds removal is justified because the addition of proposed paragraph (f) would require the same for all records, and therefore make the paragraph redundant.

FRA is redesignating paragraph (f) as paragraph (i) and slightly revising it for punctuation; no substantive change is intended.

Comments: FRA received no comments on these proposed changes.

Final rule: Paragraphs (h) and (i) are adopted as proposed in the NPRM.

VI. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action within the meaning of Executive Order 12866 (E.O. 12866) and DOT's Administrative Rulemaking, Guidance, and Enforcement Procedures in 49 CFR part 5. This rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this rule can be found in the rule's Regulatory Impact Analysis, which FRA has prepared and placed in the docket (docket number FRA–2018–0104). The analysis details estimated costs and cost savings the railroad track owners regulated by the rule are likely to see over a 10-year period.

FRA is revising its regulations governing the minimum safety requirements for railroad track. The changes include: Permitting the inspection of rail using continuous rail testing; allowing the use of flange-bearing frogs in crossing diamonds; relaxing the guard check gage limits on heavy-point frogs used in Class 5 track; removing the high-density commuter line exception; and other miscellaneous revisions.

The revisions will benefit railroad track owners and the public by reducing unnecessary costs and incentivizing innovation, while improving rail safety.

The following table shows the net cost savings of this rule, over the 10-year analysis.

NET COST SAVINGS, IN MILLIONS

[2019 Dollars]

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Costs	$27.44	$33.24	$3.91	$3.90
Cost Savings	149.30	180.99	21.26	21.22
Net Cost Savings	121.86	147.75	17.35	17.32

The annualized net cost savings will be $17.4 million (7%) and $17.3 million (3%).

The additional flexibility of this rule will result in cost savings for railroad track owners. Continuous rail testing will reduce overtime hours for maintenance-of-way employees. The flange-bearing frog changes will eliminate the required inspection time during the first week when compared to current conditions under the FRA waiver. The continuous testing, flange-bearing frog, and heavy-point frog changes will eliminate the need for and costs of applying for waivers to implement such a testing practice and track components. In fact, fewer slow orders, which are temporary speed restrictions, will be needed with continuous testing, which will result in cost savings.

The table below presents the estimated cost savings associated with the rule, over the 10-year analysis.

SUMMARY OF TOTAL COST SAVINGS, IN MILLIONS

Section	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Government Cost Savings	$0.194	$0.229	$0.028	$0.027
FBF Inspections	0.184	0.215	0.026	0.025
Frog Waiver Savings	0.013	0.016	0.002	0.002
Continuous Testing Labor Cost Savings	7.452	9.034	1.061	1.059
Slow Orders	141.329	171.340	20.122	20.086
Continuous Testing Waiver Savings	0.132	0.157	0.019	0.018
Total	149.305	180.991	21.258	21.218

The annualized cost savings of this final rule will be $21.3 million (7%) and $21.2 million (3%).

If railroad track owners choose to take advantage of the cost savings from this rule, they will incur additional labor costs associated with continuous rail testing. These costs are voluntary because track owners will only incur them if they choose to operate continuous rail testing vehicles. The table below presents the estimated costs, over the 10-year analysis.

SUMMARY OF TOTAL COSTS, IN MILLIONS

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Continuous Testing	$27.4	$33.2	$3.9	$3.9

The annualized costs of this final rule will be $3.9 million (at both 7 percent and 3 percent).

The rule will also encourage the use of continuous rail testing, which may reduce certain types of derailments. FRA does not have sufficient data to estimate the reduction in derailments. However, FRA expects the final rule to result in safety benefits from fewer injuries, fatalities, and property and track damage.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 ((RFA) 5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. When an agency issues a rulemaking proposal, the RFA requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Out of an abundance of caution, FRA prepared an initial regulatory flexibility analysis to accompany the NPRM, which noted no expected significant economic impact on a substantial number of small entities; no comments were received on this analysis.

In this final rule, FRA is revising its regulations governing the minimum safety requirements for railroad track. The changes include: Permitting railroad track owners to inspect rail using continuous rail testing; allowing the use of flange-bearing frogs in crossing diamonds; relaxing the guard check gage limits on heavy point frogs used in Class 5 track; removing the high-density commuter line exception; and other miscellaneous revisions. The revisions will benefit railroad track owners and the public by reducing unnecessary costs and incentivizing innovation, while improving rail safety. FRA estimates this final rule will only minimally impact small railroads and any impact will likely be beneficial.

Consistent with the findings in FRA's initial regulatory flexibility analysis, and the lack of any comments received on it, the Administrator of FRA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the current and new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [3]
213.4(f)—Excepted track—Notification to FRA about removal of excepted track.	746 railroads	15 notices	10 minutes	2.5	$190
213.5(c)—Responsibility for compliance—Notification of assignment to FRA.	746 railroads	15 notices	1 hour	15	1,140
213.7(a)–(b)—Designations: Names on list with written authorizations.	746 railroads	2,500 documents	10 minutes	416.7	31,669
213.17(a)—Waivers	746 railroads	10 petitions	2 hours	20	1,520
213.57(e)—Curves, elevation and speed limitations—Request to FRA for vehicle type approval.	746 railroads	4 requests	8 hours	32	2,432
—(f) Written notification to FRA prior to implementation of higher curving speeds.	746 railroads	4 notifications	2 hours	8	608
—(g) Written consent of track owners obtained by railroad providing service over that track.	746 railroads	4 written consents	45 minutes	3	228
213.110(a)—Gage restraint measurement systems (GRMS)—Implementing GRMS—notices & reports.	746 railroads	1 notification	45 minutes	.8	61
—(g) GRMS vehicle output reports	746 railroads	1 report	5 minutes	.1	8
—(h) GRMS vehicle exception reports	746 railroads	1 report	5 minutes	.1	8
—(j) GRMS/PTLF—procedures for data integrity.	746 railroads	1 documented procedure	1 hour	1	76
—(n) GRMS inspection records	746 railroads	2 records	30 minutes	1	76
213.118(a)–(c)—Continuous welded rail (CWR)—Revised plans w/procedures for CWR.	438 railroads	10 plans	4 hours	40	3,040
—(d) Notification to FRA and RR employees of CWR plan effective date.	438 railroads	750 notifications to employees.	15 seconds	3.1	236
—(e) Written submissions after plan disapproval.	438 railroads	5 written submissions	2 hours	10	760
—(e) Final FRA disapproval and plan amendment.	438 railroads	5 amended plans	1 hour	5	380
213.234(f)—Automated inspection of track constructed with concrete crossties—Recordkeeping requirements.	30 railroads	2,000 records	30 minutes	1,000	76,000
213.237(b)(2)—Inspection of Rail—Detailed request to FRA to change designation of a rail inspection segment or establish a new segment.	65 railroads	4 requests	15 minutes	1	76
213.237(b)(3)—Notification to FRA and all affected employees of designation's effective date after FRA's approval/conditional approval.	65 railroads	1 notice to FRA + 15 bulletins.	15 minutes	4	304
—(d) Notice to FRA that service failure rate target in paragraph (a) of this section is not achieved.	65 railroads	4 notices	15 minutes	1	76
—(d) Explanation to FRA as to why performance target was not achieved and provision to FRA of remedial action plan.	65 railroads	4 letters of explanation/ Plans.	15 minutes	1	76
213.238—Qualified operators—Written or electronic of qualification [4].	3 railroads + 5 Testing Entities.	250 records	5 minutes	20.8	1,581
213.240(b)—Continuous Rail Testing—Procedures for conducting continuous testing (New requirement).	12 railroads	4 procedures	8 hours	32	2,432
—(c) Type of rail test (continuous or stop-and-verify)—Record (New requirement).	12 railroads	25,000 documents/ records.	2 seconds	14	1,064

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [3]
—(c) Type of rail test (continuous or stop-and-verify)—Documented changes (New requirement).	12 railroads	100 documents	1 minute	1.7	129
—(g) Annual reports to FRA (New requirement)	12 railroads	12 reports	4 hours	48	3,648
213.241—Inspection records [5]	746 railroads	1,375,000 records	10 minutes	229,166.7	17,416,669
213.303(b)—Responsibility for compliance—Notification of assignment to FRA.	2 railroads	5 notices	30 minutes	2.5	190
213.305(a)–(c)—Designation of qualified individuals; general qualifications—Written authorization for remedial actions.	2 railroads	20 written documents	30 minutes	10	760
—(e) Recordkeeping requirements for designations.	2 railroads	200 records	10 minutes	33.3	2,531
213.317(a)–(b)—Waivers	2 railroads	2 petitions	8 hours	16	1,216
213.329(e)—Curves, elevation and speed limitations—FRA approval of qualified vehicle types based on results of testing.	2 railroads	2 cover letters + 2 technical reports + 2 diagrams.	30 minutes + 16 hours + 15 minutes.	33.5 hours	2,546
—(f) Written notification to FRA 30 days prior to implementation of higher curving speeds.	2 railroads	2 notices	2 hours	4	304
—(g) Written consent of other affected track owners by railroad.	2 railroads	2 written consents	45 minutes	1.5	114
213.333(d)—Automated vehicle-based inspection systems—Track Geometry Measurement System (TGMS) output/exception reports.	7 railroads	7 reports	1 hour	7	532
213.341(b)–(d)—Initial inspection of new rail & welds—Inspection records.	2 railroads	800 records	2 minutes	26.7	2,029
213.343(a)–(e)—Continuous welded rail (CWR)—Procedures for installations and adjustments of CWR.	2 railroads	2 plans	4 hours	8	608
—(h) Recordkeeping requirements	2 railroads	8,000 records	2 minutes	266.7	20,269
213.345(a)–(c)—Vehicle qualification testing—Vehicle qualification program for all vehicle types operating at track Class 6 speeds or above.	2 railroads	2 program plans	120 hours	240	18,240
—(d) Previously qualified vehicle types qualification programs.	2 railroads	2 program plans	8 hours	16	1,216
—(h) Written consent of other affected track owners by railroad.	4 railroads	4 written consents	30 minutes	2	230
213.369(d)—Inspection Records—Record of inspection of track.	2 railroads	15,000 records	10 minutes	2,500	190,000
Total	746 railroads	1,429,776 responses	N/A	234,016	17,785,272

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Federal Railroad Administration, at 202–493–0440.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Hodan Wells, Federal Railroad Administration, via email to Ms. Wells at *Hodan.Wells@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. FRA did not receive any OMB or public comments on the information collection requirements contained in the NPRM.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. The current OMB control number for part 213 is 2130–0010.

D. Environmental Impact

FRA has evaluated this final rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Council of Environmental Quality's NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA's NEPA implementing regulations at 23 CFR part 771 and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS. See 40 CFR 1508.4. Specifically, FRA has determined that this final rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.''

The purpose of this rulemaking is to revise FRA's Track Safety Standards to reduce unnecessary costs and incentivize innovation, while improving rail safety. This rule does not directly or indirectly impact any environmental resources and will not result in significantly increased emissions of air or water pollutants or noise. Instead, the final rule is likely to result in safety

[3] The dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

[4] Includes burdens associated with proposed § 213.240(d)(2).

[5] Note: Each record of an inspection under §§ 213.4, 213.119, 213.233, 213.235, and 213.237 is covered under § 213.241.

benefits. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. *See* 23 CFR 771.116(b). FRA has concluded that no such unusual circumstances exist with respect to this final regulation and it meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties. *See* 16 U.S.C. 470. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f). *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

E. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534 May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this final rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

F. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the proposed rule is not required.

G. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in 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, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in such an expenditure, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). FRA evaluated this final rule in accordance with Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

Executive Order 13783, ''Promoting Energy Independence and Economic Growth,'' requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. *See* 82 FR 16093 (March 31, 2017). FRA determined this final rule will not burden the development or use of domestically produced energy resources.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 213 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

■ 1. The authority citation for 49 CFR part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Pub. L. 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

■ 2. Amend § 213.1 by revising paragraph (b) to read as follows:

§ 213.1 Scope of part.

* * * * *

(b) Subparts A through F apply to track Classes 1 through 5. Subpart G and 213.2, 213.3, 213.15, and 213.240 apply to track over which trains are operated at speeds in excess of those permitted over Class 5 track.

■ 3. Amend § 213.5 by revising paragraph (a)(3) to read as follows:

§ 213.5 Responsibility for compliance.

(a) * * *

(3) Operate under authority of a person designated under § 213.7(a), subject to conditions set forth in this part. If the operation is on continuous welded rail (CWR) track, the person under whose authority operations are conducted must also be designated under § 213.7(c).

* * * * *

■ 4. Amend § 213.7 by revising paragraphs (a)(1)(i) and (ii), (a)(3), (b)(3),

(c)(4), and (e) and adding paragraph (f) to read as follows:

§ 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

(a) * * *

(1) * * *

(i) 1 year of experience in railroad track maintenance under traffic conditions; or

(ii) A combination of experience in track maintenance and training from a course in track maintenance or from a college level educational program related to track maintenance.

* * * * *

(3) Authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this part.

(b) * * *

(3) Authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this part, pending review by a qualified person designated under paragraph (a) of this section.

(c) * * *

(4) Authorization from the track owner to prescribe remedial actions to correct or safely compensate from deviation from the requirements in these procedures and successfully completed a recorded examination on those procedures as part of the qualification process.

* * * * *

(e) With respect to designations under paragraph (a) through (d) of this section, each track owner shall maintain records of—

(1) Each designation in effect;

(2) The date each designation was made; and

(3) The basis for each designation, including the method used to determine that the designated person is qualified.

(f) Each track owner shall keep designation records required under paragraph (e) of this section readily available for inspection or copying by the Federal Railroad Administration during regular business hours, following reasonable notice.

■ 5. Amend § 213.9 by revising paragraph (b) to read as follows:

§ 213.9 Classes of track: operating speed limits.

* * * * *

(b) If a segment of track does not meet all of the requirements of its intended class, it is reclassified to the next lowest class of track for which it does meet all of the requirements of this part. However, if the segment of track does not at least meet the requirements of Class 1 track, operations may continue at Class 1 speeds for a period of not more than 30 days without bringing the track into compliance, under the authority of a person designated under § 213.7(a), after that person determines that operations may safely continue and subject to any limiting conditions specified by such person.

■ 6. Revise § 213.11 to read as follows:

§ 213.11 Restoration or renewal of track under traffic conditions.

If during a period of restoration or renewal, track is under traffic conditions and does not meet all of the requirements prescribed in this part, the work on the track shall be under the continuous supervision of a person designated under § 213.7(a) and, as applicable, § 213.7(c). The work on the track shall also be subject to any limiting conditions specified by such person. The operating speed cannot be more than the maximum allowable speed under § 213.9 for the class of track concerned. The term ''continuous supervision'' as used in this section means the physical presence of that person at the job site. However, since the work may be performed over a large area, it is not necessary that each phase of the work be done under the visual supervision of that person.

Subpart D—Track Structure

■ 7. Amend § 213.113 by revising the second sentence of paragraph (b) introductory text to read as follows:

§ 213.113 Defective rails.

* * * * *

(b) * * * Except as provided in § 213.240, the track owner must verify the indication within four hours, unless the track owner has an indication of the existence of a defect that requires remedial action A, A2, or B identified in the table contained in paragraph (c) of this section, in which case the track owner must immediately verify the indication. * * *

* * * * *

■ 8. Amend § 213.137 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 213.137 Frogs.

(a) Except as provided in paragraph (e) of this section, the flangeway depth measured from a plane across the wheel-bearing area of a frog on Class 1 track shall not be less than 1⅜ inches, or less than 1½ inches on Classes 2 through 5 track.

* * * * *

(e) The flange depth requirements in paragraph (a) do not apply to a frog designed as a flange-bearing frog (FBF) used in a crossing diamond in Classes 2 through 5 track, provided that the crossing angle is greater than 20 degrees unless movable guard rails are used.

■ 9. Revise § 213.143 to read as follows:

§ 213.143 Frog guard rails and guard faces; gage.

(a) The guard check and guard face gages in frogs shall be within the following limits—

TABLE 1 TO § 213.143(a)

Class of track	Guard check gage	Guard face gage
	The distance between the gage line of a frog to the guard line[1] of its guard rail or guarding face, measured across the track at right angles to the gage line,[2] may not be less than—	The distance between guard lines,[1] measured across the track at right angles to the gage line,[2] may not be more than—
Class 1 track	4′6⅛″	4′5¼″
Class 2 track	4′6¼″	4′5⅛″
Class 3 and 4 track	4′6⅜″	4′5⅛″
Class 5 track	[3] 4′6½″	4′5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

[2] A line five-eighths of an inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.
[3] See paragraph (b) of this section.

(b) For any heavy-point frog (HPF) on Class 5 track, the guard check gage may be less than 4′6½″ but not be less than 4′6⅜″, provided that:

(1) Each HPF and guard rails on both rails through the turnout are equipped with at least three serviceable through-gage plates with elastic rail fasteners and guard rail braces that permit adjustment of the guard check gage without removing spikes or other fasteners from the crossties; and

(2) Each HPF bears an identifying mark applied by either the track owner, railroad, or the frog manufacturer that identifies the frog as an HPF.

Subpart F—Inspection

■ 10. Amend § 213.233 by revising the section heading, paragraph (b), the first entry in the table in paragraph (c), and paragraph (d) to read as follows:

§ 213.233 Visual track inspections.

* * * * *

(b) Each inspection shall be made on foot or by traversing the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 m.p.h. when traversing track crossings and turnouts; otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When traversing the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track the inspector traverses;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspectors' visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track the inspectors traverse;

(3) Each main track must be traversed by the vehicle or inspected on foot at least once every two weeks, and each siding must be traversed by the vehicle or inspected on foot at least once every month; and

(4) Track inspection records shall indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) * * *

Class of track	Type of track	Required frequency
Excepted track, and Class 1, 2, and 3 track	Main track and sidings	Weekly [1] with at least 3 calendar days' interval between inspections, or before use, if the track is used less than once a week, or twice weekly with at least 1 calendar day interval between inspections, if the track carries passenger trains [2] or more than 10 million gross tons of traffic during the preceding calendar year.
*	*	* * * * * * *

[1] An inspection week is defined as a seven (7) day period beginning on Sunday and ending on Saturday.
[2] "Twice weekly" inspection requirement for track carrying regularly scheduled passenger trains does not apply where passengers train service consists solely of tourist, scenic, historic, or excursion operations as defined in 49 CFR 238.5 and the following conditions are met for an inspection week: (1) No passenger service is operated during the inspection week, or (2) if passenger service is operated during the inspection week: (i) The passenger service is operated only on a weekend or a 3-day extended weekend (weekend plus a contiguous Monday or Friday), and (ii) an inspection is conducted no more than 1 calendar day before a weekend or 3-day extended weekend on which passenger service is to be operated.

(d) If the § 213.7 qualified person making the inspection finds a deviation from the requirements of this part, the inspector shall immediately initiate remedial action. Any subsequent movements to facilitate repairs on track that is out of service must be authorized by a § 213.7 qualified person.

■ 11. Add § 213.240 to read as follows:

§ 213.240 Continuous rail testing.

(a) Track owners may elect to use continuous rail testing to satisfy the requirements for conducting internal rail inspections under § 213.237 or § 213.339. When a track owner utilizes the continuous rail test inspection process under the requirements of this section, the track owner is exempt from the requirements of § 213.113(b); all other requirements of § 213.113 apply.

(b) Track owners shall adopt the necessary procedures for conducting continuous testing. At a minimum, the procedures must conform to the requirements of this section and ensure the following:

(1) Test data is timely and accurately transmitted and analyzed;

(2) Suspect locations are accurately identified for field verification;

(3) Suspect locations are categorized and prioritized according to their potential severity;

(4) Suspect locations are accurately field-verified; and

(5) Suspect locations will be designated following field verification.

(c) The track owner must designate and record the type of rail test (continuous or stop-and-verify) to be conducted prior to commencing the test over a track segment and make those records available to FRA upon request during regular business hours following reasonable notice. If the type of rail test changes following commencement of the test, the change must be documented and include the time the test was started and when it was changed, and the milepost where the test started and where it was changed. If the track owner intends to conduct a continuous test, the track owner must designate and record whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.237 or § 213.339. This documentation must be provided to FRA upon request during regular business hours following reasonable notice.

(d)(1) Continuous rail test inspection vehicle operators must be qualified under § 213.238, with the exception of § 213.238(b)(3).

(2) Internal rail inspection data collected during continuous rail tests must be reviewed and interpreted by a person qualified to interpret the equipment responses. Each employer of a person qualified to interpret equipment responses shall maintain written or electronic records of each qualification in effect, including the name of the employee, the equipment to which the qualification applies, the date of qualification, and the date of the most recent reevaluation of the qualification, if any. Records concerning these qualifications, including copies of training programs, training materials, and recorded examinations shall be kept at a location designated by the employer and available for inspection and copying by FRA during regular business hours, following reasonable notice.

(3) All suspect locations must be field-verified by a person qualified under § 213.238.

(e) At a minimum, the continuous rail test process must produce a report containing a systematic listing of all suspected locations that may contain any of the defects listed in the table in § 213.113(c), identified so that a person qualified under § 213.238 can accurately locate and field-verify each suspected defect.

(1) Except as provided in paragraph (e)(6) of this section, and subject to the requirements of paragraphs (e)(2) and (3) of this section, if the continuous rail test inspection vehicle indicates a suspect location, field verification must be conducted within 84 hours of the indication of the suspect location.

(2) Except as provided in paragraph (e)(6) of this section, and subject to the requirements of paragraph (e)(3) of this section, if the continuous rail test inspection vehicle indicates a suspect location containing a suspected defect that, if verified, requires remedial action A, A2, or B identified in the table contained in § 213.113(c), the track owner must field-verify the suspect location no more than 36 hours from indication of the suspect location.

(3) If the continuous rail test inspection vehicle indicates a broken rail with rail separation, the track owner must have procedures to ensure that adequate protection is immediately implemented.

(4) A suspect location is not considered a defect under § 213.113(c) until it has been field-verified by a person qualified under § 213.238. After the suspect location is field-verified and determined to be a defect, the track owner must immediately perform all required remedial actions prescribed in § 213.113(a).

(5) Any suspected location not field-verified within the time required under paragraphs (e)(1) and (2) of this section must be protected by applying the most restrictive remedial action under § 213.113(c) for the suspected type and size of the suspected defect. The remedial action must be applied over a sufficient segment of track to assure coverage of the suspected defect location until field-verified.

(6) A continuous rail test that is not conducted to satisfy the requirements for an internal rail inspection under § 213.237 or § 213.339, and has been properly designated and recorded by the track owner under paragraph (c) of this section, is exempt from the requirements of paragraphs (e)(1), (2), and (5) of this section.

(f) Each suspect location must be recorded with repeatable accuracy that allows for the location to be accurately located for subsequent verification and, as necessary, remedial action.

(g) Within 45 days following the end of each calendar year, each track owner utilizing continuous rail testing must provide the FRA Associate Administrator for Railroad Safety/Chief Safety Officer with an annual report, in a reasonably usable format, or its native electronic format, containing at least the following information for each track segment requiring internal rail inspection under § 213.237 or § 213.339:

(1) The track owner's name;

(2) The railroad division and subdivision;

(3) The segment identifier, milepost limits, and length of each segment;

(4) The track number;

(5) The class of track;

(6) The annual million gross tons over the track;

(7) The total number of stop-and-verify rail tests and the total number of continuous rail tests over each track segment;

(8) The total number of defects identified over each track segment; and

(9) The total number of service failures on each track segment.

■ 12. Amend § 213.241 by revising paragraphs (b), (f), and (g) and adding paragraphs (h) through (j) to read as follows:

§ 213.241 Inspection records.

* * * * *

(b) Each record of an inspection under §§ 213.4, 213.119, 213.233, and 213.235 shall be prepared on the day the inspection is made and signed or otherwise certified by the person making the inspection. Records shall specify the author of the record, the type of track inspected, date and location of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The track owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The track owner shall also designate one location, within 100 miles of each State in which it conducts operations, where copies of records that apply to those operations are maintained or can be viewed following 10 days' notice by the Federal Railroad Administration.

* * * * *

(f) Records of continuous rail testing under § 213.240 shall—

(1) Include all information required under § 213.240(e);

(2) State whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.237;

(3) List the date(s) and time(s) of the continuous rail test data collection, including the date and time of the start and end of the test run, and the date and time each suspect location was identified and field-verified;

(4) Include the determination made after field verification of each suspect location, including the:

(i) Location and type of defect found;

(ii) Size of defect; and

(iii) Initial remedial action taken, if required, and the date thereof; and

(5) Be retained for at least two years after the inspection and for at least one year after initial remedial action is taken, whichever is later.

(g) Track owners that elect to utilize continuous rail testing under § 213.240 shall maintain records of all continuous rail testing operations sufficient for monitoring and determining compliance with all applicable regulations and shall make those records available to FRA during regular business hours following reasonable notice.

(h) Track inspection records shall be kept available to persons who performed the inspections and to persons performing subsequent inspections of the track segment.

(i) Each track owner required to keep inspection records under this section shall make those records available for inspection and copying by FRA upon request during regular business hours following reasonable notice.

(j) For purposes of complying with the requirements of this section, a track owner may create, retain, transmit, store, and retrieve records by electronic means provided that—

(1) The system used to generate the electronic record meets all requirements and contains the information required under this subpart;

(2) The track owner monitors its electronic records database to ensure record accuracy;

(3) The electronic system is designed to uniquely identify the author of the record. No two persons shall have the same electronic identity;

(4) The electronic system ensures that each record cannot be modified in any way, or replaced, once the record is completed;

(5) The electronic storage of each record shall be initiated by the person making the inspection within 72 hours following the completion of that inspection; and

(6) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment.

Subpart G—Train Operations at Track Classes 6 and Higher

■ 13. Amend § 213.305 by revising paragraphs (a)(3), (b)(3), (c)(4), and (e) and adding paragraph (f) to read as follows:

§ 213.305 Designation of qualified individuals; general qualifications.

* * * * *

(a) * * *

(3) Be authorized by the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this subpart and successfully completed a recorded examination on this subpart as part of the qualification process.

(b) * * *

(3) Be authorized by the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this subpart and successfully completed a recorded examination on this subpart as part of the qualification process.

(c) * * *

(4) Authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in those procedures and successfully completed a recorded examination on those procedures as part of the qualification process. The recorded examination may be written, or it may be a computer file with the results of an interactive training course.

* * * * *

(e) With respect to designations under paragraphs (a), (b), (c) and (d) of this section, each track owner shall maintain records of:

(1) Each designation in effect;

(2) The date each designation was made; and

(3) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof; and

(ii) The manner in which the track owner has determined a successful completion of that training course, including test scores or other qualifying results.

(f) Each track owner shall keep these designation records readily available for inspection or copying by the Federal Railroad Administration during regular business hours, following reasonable notice.

■ 14. Amend § 213.365 by revising the section heading and paragraphs (b) through (d) to read as follow:

§ 213.365 Visual track inspections.

* * * * *

(b) Each inspection shall be made on foot or by traversing the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 m.p.h. when traversing track crossings and turnouts; otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When traversing the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track upon which the inspector traverses;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspectors' visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track upon which the inspectors traverse;

(3) Each main track must be traversed by a vehicle or inspected on foot at least once every two weeks, and each siding must be traversed by a vehicle or inspected on foot at least once every month; and

(4) Track inspection records shall indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) Each visual track inspection shall be made in accordance with the following schedule—

TABLE 1 TO § 213.365(c)

Class of track	Required frequency
6, 7, and 8 ..	Twice weekly [1] with at least a 2 calendar day's interval between inspections.
9	Three times per week.

[1] An inspection week is defined as a seven (7) day period beginning on Sunday and ending on Saturday.

(d) If the § 213.305 qualified person making the inspection finds a deviation from the requirements of this part, the person shall immediately initiate remedial action. Any subsequent movements to facilitate repairs on track that is out of service must be authorized by a § 213.305 qualified person.

* * * * *

■ 15. Amend § 213.369 by revising paragraphs (b) and (d) through (f) and adding paragraphs (g) through (i) to read as follows:

§ 213.369 Inspection records.

* * * * *

(b) Except as provided in paragraph (e) of this section, each record of an inspection under § 213.365 shall be prepared on the day the inspection is made and signed or otherwise certified by the person making the inspection. Records shall specify the author of the record, the type of track inspected, date of inspection, location of inspection, nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The track owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The track owner shall also designate one location, within 100 miles of each State in which it conducts operations, where copies of records that apply to those operations are maintained or can be viewed following 10 days' notice by the Federal Railroad Administration.

* * * * *

(d) Records of continuous rail testing under § 213.240 shall—

(1) Include all information required under § 213.240(e);

(2) State whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.339;

(3) List the date(s) and time(s) of the continuous rail test data collection, including the date and time of the start and end of the test run, and the date and

time each suspect location was identified and field-verified;

(4) Include the determination made after field verification of each suspect location, including the:

(i) Location and type of defect found;

(ii) Size of defect; and

(iii) Initial remedial action taken, if required, and the date thereof; and

(5) Be retained for at least two years after the inspection and for at least one year after initial remedial action is taken, whichever is later.

(e) Track owners that elect to utilize continuous rail testing under § 213.240 shall maintain records of all continuous rail testing operations sufficient for monitoring and determining compliance with all applicable regulations and shall make those records available to FRA during regular business hours following reasonable notice.

(f) Track inspection records shall be kept available to persons who perform the inspections and to persons performing subsequent inspections.

(g) Each track owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administration upon request during regular business hours following reasonable notice.

(h) For purposes of compliance with the requirements of this section, a track owner may create, retain, transmit, store, and retrieve records by electronic means provided that—

(1) The system used to generate the electronic record meets all requirements and contains the information required under this subpart;

(2) The track owner monitors its electronic records database to ensure record accuracy;

(3) The electronic system is designed to uniquely identify the author of the record. No two persons shall have the same electronic identity;

(4) The electronic system ensures that each record cannot be modified in any way, or replaced, once the record is completed;

(5) The electronic storage of each record shall be initiated by the person making the inspection within 72 hours following the completion of that inspection; and

(6) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment.

(i) Each vehicle/track interaction safety record required under § 213.333(g) and (m) shall be made available for inspection and copying by the FRA at the locations specified in paragraph (b) of this section.

Issued in Washington, DC.

Quintin Kendall,

Deputy Administrator.

[FR Doc. 2020–18339 Filed 10–6–20; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 51, 60, 61, and 63
Test Methods and Performance Specifications for Air Emission Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, 61, and 63

[EPA–HQ–OAR–2018–0815; FRL–10012–11–OAR]

RIN 2060–AU39

Test Methods and Performance Specifications for Air Emission Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action corrects and updates regulations for source testing of emissions. These revisions include corrections to inaccurate testing provisions, updates to outdated procedures, and approved alternative procedures that will provide flexibility to testers. These revisions will improve the quality of data and will not impose any new substantive requirements on source owners or operators.

DATES: The final rule is effective on December 7, 2020. The incorporation by reference of certain materials listed in the rule is approved by the Director of the Federal Register as of December 7, 2020]. The incorporation by reference of certain other materials listed in the rule was approved by the Director of the Federal Register as of July 6, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0815. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information 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. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Lula H. Melton, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this action apply to me?

The revisions promulgated in this final rule apply to industries that are subject to the current provisions of 40 Code of Federal Regulations (CFR) parts 51, 60, 61, and 63. We did not list all of the specific affected industries or their North American Industry Classification System (NAICS) codes herein since there are many affected sources in numerous NAICS categories. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13.

B. What action is the Agency taking?

We are promulgating corrections and updates to regulations for source testing of emissions. More specifically, we are correcting typographical and technical errors, updating testing procedures, and adding alternative equipment and methods the Agency has deemed acceptable to use.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 7, 2020. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the

subject of this final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Background

The EPA catalogs errors, corrections, and approved alternatives to test methods, performance specifications, and associated regulations in 40 CFR parts 51, 60, 61, and 63 and updates and revises these provisions periodically. The most recent revisions to testing regulations for air emission sources were proposed in the **Federal Register** on December 13, 2019 (84 FR 68069). The public comment period ended February 11, 2020, and 18 comment letters were received from the public; 13 of the comment letters were relevant, and the other 5 comment letters were considered beyond the scope of the proposed rule. This final rule was developed based on public comments that the agency received on the proposed rulemaking.

III. Incorporation by Reference

Consistent with the proposal, EPA has incorporated by reference various consensus standards. Specifically, the EPA has incorporated ASTM D 2369–10, which covers volatile organic content of coatings, in Method 24. In addition, in response to comments the EPA has incorporated ASTM D5623–16 and ASTM D7039–15a in subpart KKKK of part 60, which involves procedures for determining the sulfur content of liquid fuels. These standards were developed and adopted by ASTM International and may be obtained from *http://www.astm.org* or from the ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

The EPA has incorporated by reference SW–846 Method 6010D and SW–846 Method 6020B in Method 12. Method 6010D covers inductively coupled plasma-atomic emission spectrometry (ICP–AES) analysis, and Method 6020B covers inductively coupled plasma-mass spectrometry (ICP–MS) analysis. These methods may be obtained from *https://www.epa.gov* or from the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DE 20460.

The EPA has incorporated by reference Gas Processors Association (GPA) 2140 and GPA 2261 in subpart KKKK of part 60, which involve procedures for determining the sulfur content of gaseous fuels. The EPA also incorporated by reference GPA 2166 and GPA 2174 in subpart KKKK of part 60, which involve procedures for obtaining samples from gaseous and liquid fuels, respectively. These GPA standards were developed and adopted by the Gas Processors Association and may be obtained from *https://gpamidstream.org/* or from the Gas Processors Association, 6526 East 60th Street, Tulsa, OK 74145.

The EPA has incorporated by reference International Organization for Standardization (ISO) 10715 in subpart KKKK of part 60. This standard involves procedures for obtaining samples from gaseous fuels. This standard was developed by the International Organization for Standardization and may be obtained from *https://www.iso.org/home.html* or from the IHS Inc., 15 Inverness Way East, Englewood, CO 80112.

The EPA incorporated by reference American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 14—Natural Gas Fluids Measurement, Section 1—Collecting and Handling of Natural Gas Samples for Custody Transfer (MPMS 14.1) in subpart KKKK of part 60. This standard involves procedures for manually obtaining sampling from gaseous fuels. This standard was developed by the American Petroleum Institute and may be obtained from *https://api.org/* or from the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005.

ASTM D4057–5 (Reapproved 2000), ASTM D4177–95 (Reapproved 2000), ASTM D5287–97 (Reapproved 2002), ASTM D6348–03, ASTM D6784–02 (Reapproved 2008), and ASME PTC 19.10–1981 were previously approved for incorporation by reference, and no changes were proposed.

The EPA updated the ASTM standards referenced in Method 311, but these standards are not incorporated by reference. The EPA did not update the ASTM standards referenced in Performance Standard 18, which are not incorporated by reference.

IV. Summary of Amendments

A. Method 201A of Appendix M of Part 51

Consistent with our proposal, in Method 201A, section 1.2, the erroneous gas filtration temperature limit of 30 °C is revised to 29.4 °C. In section 1.6, the erroneous word ''recommended'' is corrected to ''required.'' Section 6.2.1(d) is revised to allow polystyrene petri dishes as an alternative to polyethylene due to the lack of commercially available polyethylene petri dishes. The polystyrene petri dishes offer similar chemical resistivity to acids and inorganics as polyethene and have been shown to transfer extreme low residual gravimetric mass to filters when used in ambient air applications. In section 8.6.6, the erroneous stack temperature of ± 10 °C is revised to ± 28 °C. In section 17.0, the erroneous caption for Figure 7 is corrected from ''Minimum Number of Traverse Points for Preliminary Method 4 Traverse'' to ''Maximum Number of Required Traverse Points,'' and the erroneous y-axis label is corrected from ''Minimum Number of Traverse Points'' to ''Maximum Number of Traverse Points.''

B. General Provisions (Subpart A) of Part 60

Consistent with our proposal, in the General Provisions, 40 CFR 60.17(h) is revised to add ASTM D2369–10 to the list of incorporations by reference and to re-number the remaining consensus standards that are incorporated by reference in alpha-numeric order.

In 40 CFR 60.17(j) is revised to add SW–846–6010D and SW–846–6020B to the list of incorporations by reference and to re-number the remaining standards that are incorporated by reference in alpha-numeric order.

In 40 CFR 60.17(k) is revised to add GPA Standards 2166–17 and 2174–14 to the list of incorporations by reference and to re-number the remaining GPA standards that are incorporated by reference in alpha-numeric order.

In 40 CFR 60.17(l) is revised to add ISO 10715:1997 to the list of incorporations by reference.

C. Standards of Performance for New Residential Wood Heaters (Subpart AAA) of Part 60

In 40 CFR 60.534(h), the language is amended based on comments received in response to an Advance Notice of Proposed Rulemaking (ANPRM), for Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (83 FR 61585, November 30, 2018). Several commenters stated that the final clause of these existing paragraphs would create loopholes that allow manufacturers and test labs to withhold critical testing data. The EPA recognizes that this provision was not intended to create an avenue for omissions and is clarifying these communications and their reporting.

D. Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014 (Subpart XXX) of Part 60

In 40 CFR 60.766(a)(3), the text for calibration of temperature measurement is revised to provide clarity and

improve the consistency of implementation, as proposed.

E. Standards of Performance for Commercial and Industrial Solid Waste Incineration Units (Subpart CCCC) of Part 60

Consistent with our proposal, Subpart CCCC of Part 60 is revised to clarify that (1) initial and annual performance testing for particulate matter (PM) for waste-burning kilns and energy recovery units (ERU) is to be conducted using Method 5 or Method 29 of Appendix A of Part 60; (2) the required particulate matter continuous parameter monitoring system (PM CPMS) is used to demonstrate continuing compliance with the PM emission limit; and (3) heat input information must be reported for each ERU. The current language in 40 CFR 60.2110(i), (i)(1)(iii) and 60.2145(b), when read together, make it clear that for purposes of demonstrating compliance with the PM emission limit, there must be initial testing and subsequently, annually and for ongoing continuous demonstration of compliance, that data from the compliant performance test in turn must be used to set an operating limit for the PM CPMS.

Paragraphs 60.2110(i)(1) and 60.2145(j) are revised to clarify that the PM CPMS coupled with an operating limit is used for continuing compliance demonstration with the PM emission limit. Paragraphs 60.2110(i)(1)(iii) and (i)(2) are revised to include Method 29 as an alternative to Method 5 to measure PM in determining compliance with the PM emission limit. Paragraph 60.2145(j) is also revised to add PM to the list of pollutants for which performance tests are conducted annually. Paragraph (p) is added to 40 CFR 60.2210 to require that annual reports include the annual heat input and average annual heat input rate of all fuels being burned in ERUs in order to verify which subcategory of ERU applies.

The required annual performance test timeframe is changed from ''between 11 and 13 calendar months following the previous performance test'' to ''no later than 13 calendar months following the previous performance test'' in paragraphs 60.2145(y)(3) and 60.2150. The current 2-month testing range can present operational and testing challenges for facilities that have multiple commercial and industrial solid waste incineration (CISWI) units. In addition, this revision is consistent with other rules, such as the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, that maybe applicable to CISWI units.

Tables 6 (Emission Limitations for Energy Recovery Units) and 7 (Emission Limitations for Waste-Burning Kilns) are revised to clarify the performance test method for PM. The fourth column of the ''Particulate matter (filterable)'' row of Table 6 is revised to remove the requirement to use a PM CPMS as the performance test method for large ERU. The fourth column of the ''Particulate matter (filterable)'' row of Table 7 is revised to remove the requirement to use a PM CPMS and to instead specify Methods 5 and 29 as alternatives for measuring PM to determine compliance with the PM limit. The third column of the ''Particulate matter (filterable)'' row of Table 7 is changed from a 30-day rolling average to specify a 3-run average with a minimum sample volume of 2 dry standard cubic meters (dscm) per run.

F. Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units (Subpart DDDD) of Part 60

Consistent with our proposal, subpart DDDD of part 60 is revised to clarify that (1) initial and annual performance testing for PM for waste-burning kilns and ERU is to be conducted using Method 5 or Method 29 of Appendix A of part 60; (2) the required PM CPMS is used to demonstrate continuing compliance with the PM emission limit; and (3) heat input information must be reported for ERU. The current language in 40 CFR 60.2675(i) and (i)(1)(iii) and 60.2710(b), when read together, makes it clear that for purposes of demonstrating compliance for PM, performance testing must be used initially and then annually while for purposes of ongoing continuous demonstration of compliance, data from the compliant performance test is in turn to be used to set an operating limit for the PM CPMS.

Paragraphs 60.2675(i)(1) and 60.2710(j) are revised to clarify that the PM CPMS is used for continuing compliance demonstration with the PM emission limit. Paragraph 60.2710(j) is also revised to clarify that PM performance tests are conducted annually and 40 CFR 60.2675(i)(1)(iii) and (i)(2) are revised to include Method 29 as an alternative to Method 5 to measure PM in determining compliance with the PM emission limit.

Also, the required annual performance test timeframe is changed from ''between 11 and 13 calendar months following the previous performance test'' to ''no later than 13 calendar months following the previous performance test'' in 40 CFR 60.2710(y)(3) and 60.2715. The current 2-month testing range can present operational and testing challenges for facilities that have multiple CISWI units. Additionally, we note that this revision is consistent with other rules, such as the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors that might be applicable to CISWI units.

Tables 7 (Emission Limitations for Energy Recovery Units) and 8 (Emission Limitations That Apply to Waste-Burning Kilns) are revised to clarify the performance test method for PM. The fourth column of the ''Particulate matter filterable'' row of Table 7 is revised to remove the requirement to use a PM CPMS as the performance test method for large ERU. The fourth column of the ''Particulate matter filterable'' row of Table 8 is revised to specify Methods 5 and 29 as alternatives for measuring PM to determine compliance with the PM emission limit. The third column of the ''Particulate matter filterable'' row of Table 8 is changed from a 30-day rolling average to specify a 3-run average with a minimum sample volume of 1 dscm per run.

G. Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (Subpart JJJJ) of Part 60

In Table 2 of subpart JJJJ, text is added to clarify that when stack gas flowrate measurements are necessary, they must be made at the same time as pollutant concentration measurements unless the option in Method 1A is applicable and is being used. This revision is consistent with our proposal.

H. Standards of Performance for Stationary Combustion Turbines (Subpart KKKK) of Part 60

As explained at proposal, in 2006, the EPA promulgated the combustion turbine criteria pollutant NSPS, subpart KKKK of 40 CFR part 60 (71 FR 38482, July 6, 2006). This rule, which includes a sulfur dioxide (SO_2) emissions standard for all fuels, such as natural gas, also made provisions to minimize the compliance burden for owners/operators of combustion turbines burning natural gas and/or low sulfur distillate oil. At the time, the Agency recognized that any SO_2 testing requirements for owners/operators of combustion turbines burning natural gas would result in compliance costs without any associated environmental benefit.

As explained at proposal, the initial and subsequent performance tests required in 40 CFR 60.4415 may be satisfied by fuel analyses performed by the facility, a contractor, the fuel vendor, or any other qualified agency as

described in 40 CFR 60.4415(a)(1). However, the allowed fuel sample and sulfur content measurement methods are not typically used by fuel vendors and, as a result, tariff sheets cannot be used without approval of an alternate method. We further explained that owner/operators of the combustion turbines were now conducting sampling and testing using a limited number of test methods, which is a burden that was not intended in the original rulemaking.

To align the rule requirements with the original intent of subpart KKKK, the EPA proposed and solicited comment on additional sampling and sulfur content measurement methods in order to provide flexibility to the regulatory community for purposes of satisfying the SO_2 performance testing requirements. Commenters supported both test methods the EPA specifically proposed and test methods the EPA solicited comments on as additional compliance options. Commenters also stated that the EPA should align the performance testing requirements in 40 CFR 60.4415 with the monitoring requirements in 40 CFR 60.4365 and allow the use of a fuel tariff sheet or contract to satisfy the performance testing requirements. Commenters further requested that the EPA should allow for the use of the fuel sampling procedures specified in section 2.3.1.4 or 2.3.2.4 of appendix D to part 75 to demonstrate compliance with the SO_2 performance testing requirements. The EPA did not receive any comments opposing the proposed amendments.

In this action, 40 CFR 60.4415(a) is amended, as proposed, to include GPA 2166 and ISO 10715 for manual sampling of gaseous fuels and GPA 2174 for manual sampling of liquid fuels. In addition, in response to comments supporting the EPA's solicitation for comment on additional test methods, 40 CFR 60.4415(a) is amended to include API MPMS 14.1 for manual sampling of gaseous fuels. In response to comments supporting the EPA's solicitation for comment for determining the sulfur content of liquid fuels, 40 CFR 60.4415(a) is amended to include ASTM D5623 and ASTM D7039. In response to comments supporting the EPA's solicitation for comment for determining the sulfur content of gaseous fuels, 40 CFR 60.4415(a) is amended to include GPA 2140 and GPA 2261. The EPA has determined that these additional test methods will provide additional flexibility to the regulated community without any emissions increase.

In addition, in response to comments, the EPA is amending 40 CFR 60.4415(a) to allow for the use of a purchase contract, tariff sheet, or transportation contract for the fuel as an option for demonstrating compliance with the SO_2 performance testing requirements. Also, in response to comments, 40 CFR 60.4415(a) is amended to allow for the use of the fuel sampling procedures specified in section 2.3.1.4 or 2.3.2.4 of appendix D to part 75 to demonstrate compliance with the SO_2 performance testing requirements. These amendments will align the performance testing requirements with the monitoring requirements in 40 CFR 60.4365 and are consistent with the original intent, including the estimated regulatory burden, of the rule. Therefore, the EPA considers these options sufficient to demonstrate compliance with subpart KKKK. The Agency notes that this approach is consistent with the SO_2 performance testing requirements in other NSPS (*e.g.,* 40 CFR 60.49b(r) in subpart Db).

I. Standard of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (Subpart QQQQ) of Part 60

In subpart QQQQ, in 40 CFR 60.5476(i), the language is amended based on comments received in response to an ANPRM for Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (83 FR 61585, November 30, 2018). Several commenters stated that the final clause of these existing paragraphs would create loopholes that would likely allow manufacturers and test labs to withhold critical testing data. The EPA recognizes that this provision was not intended to create an avenue for omissions and has now clarified these communications and their reporting.

J. Method 4 of Appendix A–3 of Part 60

In Method 4, the erroneous leak check procedures in section 8.1.3 are corrected. In response to comments, section 8.1.3.2.1 is revised to remove the erroneous probe nozzle language, and section 8.1.3.2.2 is revised to remove the erroneous reference to section 8.1.3.2.1. The erroneous section 8.1.4.2 is corrected, and in the table in section 9.1, the erroneous reference to section 8.1.1.4 is replaced with section 8.1.3.2.2.

Method 4 is revised to standardize the constants between Methods 4 and 5, and more significant digits are added to constants to remove rounding and truncation errors. Also, the option for volumetric determination of the liquid content is deleted to remove the unnecessary density conversion. We believe most method users have moved to gravimetric measurement of the liquid contents in order to reduce testing costs and increase the accuracy of liquid measurement. Revisions occur in various sections (2.1, 6.1.5, 11.1, 11.2, 12.1.1, 12.1.2, 12.1.3, 12.2.1, and 12.2.2) and Figures 4–4 and 4–5. Also, in response to comments, the language in section 8.1.2.1 is revised to be consistent with our decision to disallow the option for volumetric moisture measurement.

K. Method 5 of Appendix A–3 of Part 60

In Method 5, sections 6.2.4 and 8.1.2 are revised to allow polystyrene petri dishes as an alternative to polyethylene due to the lack of commercially available polyethylene petri dishes. The polystyrene petri dishes offer similar chemical resistivity to acids and inorganics as polyethene and have been shown to transfer extreme low residual gravimetric mass to the filters when used in ambient air applications.

Method 5 is also revised to standardize the constants between Methods 4 and 5, and more significant digits are added to constants to remove rounding and truncation errors. Also, the option for volumetric determination of the liquid content is deleted to remove the unnecessary density conversion. We believe most method users have moved to gravimetric measurement of the liquid contents to lower the cost and increase the accuracy of the liquid measurement. Revisions occur in various sections (6.1.1.8, 6.2.5, 8.1.2.1, 8.7.6.4, 12.1, 12.3, 12.4, 12.11.1, 12.11.2, 16.1.1.4, and 16.2.3.3) and in Figure 5–6. All these revisions are consistent with the proposal.

L. Method 7C of Appendix A–4 of Part 60

In Method 7C, in section 7.2.11, the erroneous chemical compound, sodium sulfite is corrected to sodium nitrite, as proposed.

M. Method 7E of Appendix A–4 of Part 60

In Method 7E, section 8.5 is revised to ensure that the specified bias and calibration error checks are performed consistently. The results of the post-run system bias and calibration error checks are used to validate the run, as well as to correct the results of each individual test run for bias found in the sampling system. The more frequently these checks are performed, the more accurate the bias adjusted data will be. All these revisions are consistent with the proposal.

N. Method 12 of Appendix A–5 of Part 60

In Method 12, sections 7.1.2, 8.7.1.6, 8.7.3.1, and 8.7.3.6 are revised to remove references regarding the use of silicone grease, which is no longer allowed when conducting Method 5, and section 12.3 is revised to correctly refer to the title of section 12.4 of Method 5.

Sections 8.7.3.3 and 12.1 are revised based on a public comment to be consistent with the revision to eliminate the option for volumetric determination of the liquid content of impingers in Method 5. The language in section 8.7.3.3 is revised, and ''ρ_w = Density of water, 0.9982 g/ml (0.002201 lb/ml)'' is removed from section 12.1.

Section 16.1 allows measurements of PM emissions in conjunction with the lead measurement but does not currently provide enough detail to ensure proper PM measurement. Revisions to section 16.1 provide testers with necessary procedures to execute PM and lead emissions measurements using one sampling train.

Sections 16.3, 16.4.1, 16.4.2, 16.5, 16.5.1, and 16.5.2 are revised to specify appropriate EPA analytical methods, as well as supporting quality assurance procedures, as part of allowed alternatives for the use of inductively coupled plasma-atomic emission spectrometry (ICP–AES) and inductively coupled plasma-mass spectrometry (ICP–MS) for sample analysis. Section 16.0 currently allows three alternatives to the atomic absorption analysis otherwise required in Method 12; specifically, ICP–AES in section 16.4, ICP–MS in section 16.5, and cold vapor atomic fluorescence spectrometry (CVAFS) in section 16.6. Regarding options to use ICP–AES and ICP–MS for analysis of lead, sections 16.4 and 16.5 currently do not include either specifics for applying these candidate analytical techniques, or procedures for assessing data quality. The revisions provide the needed specificity by referencing existing EPA methods for ICP–AES and ICP–MS along with supporting quality assurance requirements. The option to use CVAFS to measure lead (section 16.6) is removed since CVAFS for lead is not generally available and there is no existing EPA method for conducting it. These revisions are consistent with the proposal.

O. Method 16B of Appendix A–6 of Part 60

In Method 16B, in section 2.1, the erroneous phrase ''an integrated gas sample'' is corrected to ''a gas sample.'' In sections 6.1 and 8.2, the reference to section 8.4.1 is changed to 8.3.1 since section 8.4.1 is renumbered to 8.3.1. The text in section 8.3, ''Analysis. Inject aliquots of the sample into the GC/FPD analyzer for analysis. Determine the concentration of SO_2 directly from the calibration curves or from the equation for the least-squares line.'' is moved to section 11.1 to be consistent with EPA test method formatting. Sections 8.4, 8.4.1, and 8.4.2 are renumbered to 8.3, 8.3.1, and 8.3.2, respectively, since the text in section 8.3 is moved to section 11.1. In section 11.1, the sentence ''Sample collection and analysis are concurrent for this method (see section 8.3).'' is deleted. Section 11.2 is added so that a uniform set of analysis results would be obtained over the test period. These revisions are consistent with the proposal.

P. Method 16C of Appendix A–6 of Part 60

In Method 16C, in section 13.1, ''gas concentration'' is replaced with ''span'' for clarity, as proposed.

Q. Method 24 of Appendix A–7 of Part 60

In Method 24, section 6.2, ASTM D 2369–10, which is the most recent version of ASTM D 2369, is added as proposed.

R. Method 25C of Appendix A–7 of Part 60

We proposed to change the correction of non-methane organic compounds (NMOC) within the method. Currently, NMOC is to be corrected by using either nitrogen or oxygen content. The correction is through use of nitrogen unless the nitrogen content exceeds a threshold of 20 percent. When the nitrogen threshold is above 20 percent, the correction is through use of oxygen. We considered multiple options for revisions, based on data provided by industry. These options and data are available in the docket for this rulemaking, docket ID EPA–HQ–OAR–2018–0815. The revisions to the correction that we considered are for when only oxygen is used as a NMOC correction, setting a rainfall threshold in lieu of a nitrogen percent threshold, and requiring a methane measurement and using methane only as the correction. We provided amendatory text for each option in docket ID EPA–HQ–OAR–2018–0815. Based on comments we received on proposed options, we are finalizing Option 3 with revisions to the ambient air ratio quality assurance to alleviate the sampling issues in arid areas. Therefore, sections 8.4.2, 9.1, 12.5, 12.5.1, and 12.5.2 are revised.

S. Method 26 of Appendix A–8 of Part 60

In Method 26, in section 8.1.2, the misspelled word ''undereporting'' in the next to the last sentence is corrected to ''under reporting,'' as proposed.

T. Method 26A of Appendix A–8 of Part 60

In Method 26A, section 6.1.3, a reference to section 6.1.1.7 of Method 5 is added to make the filter temperature sensor placement consistent with the requirements in Method 5. Also, in section 6.1.3, the requirement that the filter temperature sensor must be encased in glass or Teflon is added because of the reactive nature of the halogen acids. In section 8.1.5, the misspelled word ''undereporting'' is corrected to ''under reporting.'' These revisions are consistent with the proposal.

U. Performance Specification 4B of Appendix B of Part 60

In Performance Specification 4B, the response time in section 4.5 is changed from ''must not exceed 2 minutes'' to ''must not exceed 240 seconds'' to be consistent with the response time in Performance Specification 4A, as proposed.

V. Performance Specification 5 of Appendix B of Part 60

In Performance Specification 5, section 5.0, the erroneous term ''users manual'' is replaced with ''user's manual,'' and in the note in section 8.1, the sentence ''For Method 16B, you must analyze a minimum of three aliquots spaced evenly over the test period.'' is added to provide consistency with the number of aliquots analyzed in Method 16B, which may be used as the reference method. This revision is consistent with the proposal. In addition, the typo, ''space'' in the first sentence in the note in section 8.1 is corrected to ''spaced''.

W. Performance Specification 6 of Appendix B of Part 60

In Performance Specification 6, section 13.1 is revised to clarify that the calibration drift test period for the analyzers associated with the measurement of flow rate should be the same as that for the pollutant analyzer that is part of the continuous emission rate monitoring system (CERMS), as proposed. Section 13.2 is revised for clarity and to be consistent with the requirements in Performance Specification 2, as proposed, and the erroneous reference to Performance Specification 1 is corrected to Performance Specification 2 in response

to a public comment we received on the proposal.

X. Performance Specification 8 of Appendix B of Part 60

In Performance Specification 8, a new section 8.3 is added to require that an instrument drift check be performed as described in Performance Specification 2, and the existing sections 8.3, 8.4, and 8.5 are re-numbered as 8.4, 8.5, and 8.6, respectively. These revisions are consistent with the proposal.

Y. Performance Specification 9 of Appendix B of Part 60

In Performance Specification 9, the quality control and performance audit sections are clarified. In section 7.2, a requirement that performance audit gas must be an independent certified gas cylinder or cylinder mixture certified by the supplier to be accurate to two percent of the tagged value supplied with the cylinder is added.

In section 8.3, an incorrect reference concerning quality control requirements that pertain to the 7-day drift test is clarified and corrected, and an incorrect reference to the error calculation equation is corrected. In section 8.4, a requirement to ensure that performance audit samples challenge the entire sampling system including the sample transport lines is added, and quality control requirements that must be met for performance audit tests are specified by adding references to sections 13.3 and 13.4.

In section 10.1, the erroneous word ''initial'' is deleted from the title, ''Initial Multi-Point Calibration,'' and the quality control requirements that must be met for multi-point calibrations are specified by referencing sections 13.1 and 13.2 in addition to 13.3. Sections 10.1 and 10.2 are clarified such that calibrations may be performed at the instrument rather than through the entire sampling system. The inadvertently omitted word, ''by'' is inserted in the sentence in section 10.2 that reads, ''The average instrument response shall not vary more than 10 percent from the certified concentration value of the cylinder for each analyte.''

In section 13.1, language is clarified to ensure that every time a triplicate injection is performed, the calibration error must be less than or equal to 10 percent of the calibration gas value. In section 13.2, language is clarified to specify that the linear regression correlation coefficient must be determined to evaluate the calibration curve for instrument response every time the continuous emission monitoring system (CEMS) response is evaluated over multiple concentration levels. Section 13.4 is added to describe the quality control requirements for the initial and periodic performance audit test sample. These revisions are consistent with the proposal.

Z. Performance Specification 18 of Appendix B of Part 60

In Performance Specification 18, section 2.3 is revised to clarify that Method 321 is only applicable to Portland cement plants. Also, in section 11.9.1, the reference to Method 321 is deleted because Method 321 is specific to Portland cement plants, and it is already specified in the applicable regulations. These revisions are consistent with the proposal.

AA. Procedure 1 of Appendix F of Part 60

In Procedure 1, section 5.2.3(2), the criteria for cylinder gas audits (CGAs) as applicable to diluent monitors is specified for clarity, as proposed.

BB. Appendix B to Part 61—Test Methods

In the index to Appendix B to Part 61, the inadvertently omitted Method 114—Test Methods for Measuring Radionuclide Emissions from Stationary Sources and Method 115—Monitoring for Radon-222 Emissions are added in response to a comment on the proposed rulemaking.

CC. Method 107 of Appendix B of Part 61

In Method 107, the erroneous Equation 107–3 is corrected by adding the omitted plus (+) sign, as proposed.

DD. General Provisions (Subpart A) of Part 63

In the General Provisions of Part 63, in 40 CFR 63.2, consistent with the proposal, the definition of alternative test method is revised to exclude ''that is not a test method in this chapter and'' because this clarifies that use of methods other than those required by a specific subpart requires the alternative test method review and approval process.

EE. Portland Cement Manufacturing (Subpart LLL) of Part 63

In subpart LLL, the units of measurement in Equations 12, 13, 17, 18, and 19 are revised to add clarity and consistency. Equations 12 and 13 are corrected so that the operating limit units of measurement is calculated correctly. The calculation of the operating limit is established by a relationship of the total hydrocarbons (THC) CEMS signal to the organic HAPs compliance concentration. As explained at proposal, in Table 1 in Part 63, Subpart LLL, the THC and organic HAP emissions limits units are in ppmvd corrected to 7 percent oxygen. Therefore, the average organic HAP values in equation 12 need to be in ppmvd, corrected to 7 percent oxygen, instead of ppmvw. The THC CEMS monitor units of measure are ppmvw, as propane and the variables are updated to reflect this. The variables in Equations 13 and 19 reference variables in Equations 12 and 18, respectively. Those variables are updated for consistency between the equations.

The units of measurement in Equation 17 should be the monitoring system's units of measure. It is possible for those systems to be on either a wet or a dry basis. Currently, the equation is only on a wet basis, even though it should be on the basis of the monitor (wet or dry). The changes to the units of measure from ppmvw to ppmv takes either possibility into account. For Equations 17 and 18, the operating limit units of measure are changed to the units of the CEMS monitor, ppmv. These revisions are consistent with the proposal.

FF. Method 301 of Appendix A of Part 63

In Method 301, section 11.1.3, the erroneous SD in Equation 301–13 is replaced with SD_d, consistent with the proposal.

GG. Method 308 of Appendix A of Part 63

In Method 308, section 12.4, erroneous Equation 308–3 is corrected, and in section 12.5, erroneous Equation 308–5 is corrected, consistent with the proposal.

HH. Method 311 of Appendix A of Part 63

In Method 311, in sections 1.1 and 17, the ASTM is updated. Specifically, in section 1.1, ASTM D4747–87 is updated to D4747–02, and ASTM D4827–93 is updated to D4827–03. Also, in section 1.1, Provisional Standard Test Method, PS 9–94 is replaced with D5910–05. In section 17, ASTM D4457–85 is updated to ASTM D4457–02, and ASTM D4827–93 is updated to ASTM D4827–03. These updates are consistent with the proposal.

II. Method 315 of Appendix A of Part 63

In Method 315, in Figure 315–1, an omission is corrected by adding a ''not to exceed'' blank criteria for filters used in this test procedure. The blank criteria were derived from evaluation of blank and spiked filters used to prepare Method 315 audit samples. We set the allowable blank correction for filters

based on the greater of two criteria. The first criterion requires the blank to be at least 10 times the measured filter blanks from the audit study. The second criterion requires the blank to be at least 5 times the resolution of the analytical balance required in Method 315. The ''not to exceed'' value is, therefore, based on the second criterion (balance resolution) because it is the higher of the two criteria. These revisions are consistent with the proposal.

JJ. Method 316 of Appendix A of Part 63

In Method 316, section 1.0, the erroneous positive exponents are corrected to negative exponents. Also, the title of section 1.0, ''Introduction,'' is changed to ''Scope and Application'' to be consistent with the Environmental Monitoring Management Council (EMMC) format for test methods. These revisions are consistent with the proposal.

KK. Method 323 of Appendix A of Part 63

In the title of Method 323, the misspelled word ''Derivitization'' is corrected to ''Derivatization,'' and in section 2.0, the misspelled word ''colorietrically'' is corrected to ''colorimetrically.'' These revisions are consistent with the proposal.

V. Public Comments on the Proposed Rule

Eighteen comment letters were received from the public on the proposed rulemaking; 13 of the comment letters were relevant, and the other five comment letters are considered beyond the scope of the proposed rulemaking. The public comments and the agency's responses are summarized in the Response to Comments document located in the docket for this rule. See the **ADDRESSES** section of this preamble.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.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 considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by updating and clarifying test methods and performance specifications, thereby improving data quality and by providing source testers flexibility by incorporating approved alternative procedures.

C. Paperwork Reduction Act (PRA)

This action does not impose any information collection burden under the PRA. The revisions make corrections and updates to existing testing methodology and clarify testing requirements.

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. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action will not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated 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. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This action simply corrects and updates existing testing regulations. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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 used ASTM D 2369 in Method 24. The ASTM D 2369 standard covers volatile content of coatings. The EPA used (but is not incorporating by reference) ASTM D 4457, ASTM D 4827, and ASTM D 5910 in Method 311. These ASTM standards cover procedures to identify and quantify hazardous air pollutants in paints and coatings. The EPA used ASTM D 5623 and ASTM D 7039 in subpart KKKK of Part 60. The ASTM D 5623 standard covers the determination of sulfur compounds in light petroleum liquids, and the ASTM D 7039 standard covers the determination of sulfur in gasoline and diesel fuel. The ASTM standards were developed and adopted by the American Society for Testing and Materials and may be obtained from *http://www.astm.org* or from the ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

The EPA used SW–846–6010D and SW–846–6020B in Method 12. Method SW–846–6010D covers inductively coupled plasma-atomic emission spectrometry (ICP–AES) analysis, and Method SW–846–6020B covers inductively coupled plasma-mass

spectrometry (ICP–MS) analysis. These standards were developed and adopted by the Environmental Protection Agency and may be obtained from *http://www.epa.gov* or from the U.S. Environmental Protection Agency at 1200 Pennsylvania Avenue NW, Washington, DC 20460.

The EPA used API Manual of Petroleum Measurement Standards, Chapter 14—Natural Gas Fluids Measurement (Section 1) in Subpart KKKK of Part 60. This API standard involves the collecting and handling of natural gas samples for custody transfer. This API standard was developed and adopted by the American Petroleum Institute and may be obtained from *https://www.api.org/* or from the American Petroleum Institute at 1220 L Street NW, Washington, DC 20005.

The EPA used GPA 2166 in Subpart KKKK of Part 60, which involves procedures for obtaining samples from gaseous fuels. The EPA used GPA 2174 in Subpart KKKK of Part 60, which involves procedures for obtaining samples from liquid fuels. The EPA used GPA 2140 in subpart KKKK of Part 60, which involves liquefied petroleum gas specifications and test methods. The EPA used GPA 2261 in subpart KKKK of Part 60, which is a procedure for analyzing natural gas and similar gaseous mixtures. These GPA standards were developed and adopted by the GPA Midstream Association and may be obtained from *https://www.gpamidstream.org/* or from the GPA Midstream Association, Sixty Sixty American Plaza, Suite 700, Tulsa, OK 74135.

The EPA used ISO 10715 in subpart KKKK of Part 60. This standard involves procedures for obtaining samples from gaseous fuels. This standard was developed by the International Organization for Standardization and may be obtained from *https://www.iso.org/home.html* or from the ISH Inc., 15 Inverness Way East, Englewood, CO 80112.

Multiple ASTM and GPA standards were previously approved on July 6, 2006, and are already included in the regulatory text. Therefore, the current the IBR is unchanged in this rule for the following methods: ASTM D129–00, ASTM D1072–90 (Reapproved 1999); ASTM D1266–98 (Reapproved 2003)ε,1; ASTM D1552–03, ASTM D2622–05, ASTM D3246–05, ASTM D4057–95 (Reapproved 2000), ASTM D4084–05, ASTM D4177–95 (Reapproved 2000); ASTM D4294–03, ASTM D4468–85 (Reapproved 2000); ASTM D4810–88 (Reapproved 1999); ASTM D5287–97 (Reapproved 2002); ASTM D5453–05, ASTM D6228–98 (Reapproved 2003); ASTM D6667–04, and GPA 2377–86.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action is a technical correction to previously promulgated regulatory actions and does not have an impact on human health or the environment.

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

40 CFR Part 51

Environmental protection, Air pollution control, Performance specifications, Test methods and procedures.

40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Performance specifications, Test methods and procedures.

40 CFR Parts 61 and 63

Environmental protection, Air pollution control, Incorporation by reference, Performance specifications, Test methods and procedures.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR parts 51, 60, 61, and 63 as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. In appendix M to part 51, in Method 201A, revise sections ''1.2'', ''1.6'', ''6.2.1(d)'', and ''8.6.6'' and ''Figure 7'' to read as follows:

Appendix M to Part 51—Recommended Test Methods for State Implementation Plans

* * * * *

Method 201A—Determination of PM_{10} and $PM_{2.5}$ Emissions From Stationary Sources (Constant Sampling Rate Procedure)

* * * * *

1.2 *Applicability.* This method addresses the equipment, preparation, and analysis necessary to measure filterable PM. You can use this method to measure filterable PM from stationary sources only. Filterable PM is collected in stack with this method (*i.e.,* the method measures materials that are solid or liquid at stack conditions). If the gas filtration temperature exceeds 29.4 °C (85 °F), then you may use the procedures in this method to measure only filterable PM (material that does not pass through a filter or a cyclone/filter combination). If the gas filtration temperature exceeds 29.4 °C (85 °F), and you must measure both the filterable and condensable (material that condenses after passing through a filter) components of total primary (direct) PM emissions to the atmosphere, then you must combine the procedures in this method with the procedures in Method 202 of appendix M to this part for measuring condensable PM. However, if the gas filtration temperature never exceeds 29.4 °C (85 °F), then use of Method 202 of appendix M to this part is not required to measure total primary PM.

* * * * *

1.6 *Conditions.* You can use this method to obtain particle sizing at 10 micrometers and or 2.5 micrometers if you sample within 80 and 120 percent of isokinetic flow. You can also use this method to obtain total filterable particulate if you sample within 90 to 110 percent of isokinetic flow, the number of sampling points is the same as required by Method 5 of appendix A–3 to part 60 or Method 17 of appendix A–6 to part 60, and the filter temperature is within an acceptable range for these methods. For Method 5, the acceptable range for the filter temperature is generally 120 °C (248 °F) unless a higher or lower temperature is specified. The acceptable range varies depending on the source, control technology and applicable rule or permit condition. To satisfy Method 5 criteria, you may need to remove the in-stack filter and use an out-of-stack filter and recover the PM in the probe between the $PM_{2.5}$ particle sizer and the filter. In addition, to satisfy Method 5 and Method 17 criteria, you may need to sample from more than 12 traverse points. Be aware that this method determines in-stack PM_{10} and $PM_{2.5}$ filterable emissions by sampling from a required maximum of 12 sample points, at a constant flow rate through the train (the constant flow is necessary to maintain the size cuts of the cyclones), and with a filter that is at the stack temperature. In contrast, Method 5 or Method 17 trains are operated isokinetically with varying flow rates through the train. Method 5 and Method 17 require sampling from as many as 24 sample points. Method 5 uses an out-of-stack filter that is maintained at a constant temperature of 120 °C (248 °F). Further, to use this method in place of Method 5 or Method 17, you must extend the sampling time so that you collect the minimum mass necessary for weighing each portion of this sampling train. Also, if you are using this method as an alternative to a test method specified in a regulatory

requirement (*e.g.,* a requirement to conduct a compliance or performance test), then you must receive approval from the authority that established the regulatory requirement before you conduct the test.

* * * * *

6.2.1 * * *

(d) Petri dishes. For filter samples; glass, polystyrene, or polyethylene, unless otherwise specified by the Administrator.

* * * * *

8.6.6 *Sampling Head.* You must preheat the combined sampling head to the stack temperature of the gas stream at the test location (±28 °C, ±50 °F). This will heat the sampling head and prevent moisture from condensing from the sample gas stream.

* * * * *

17.0 * * *

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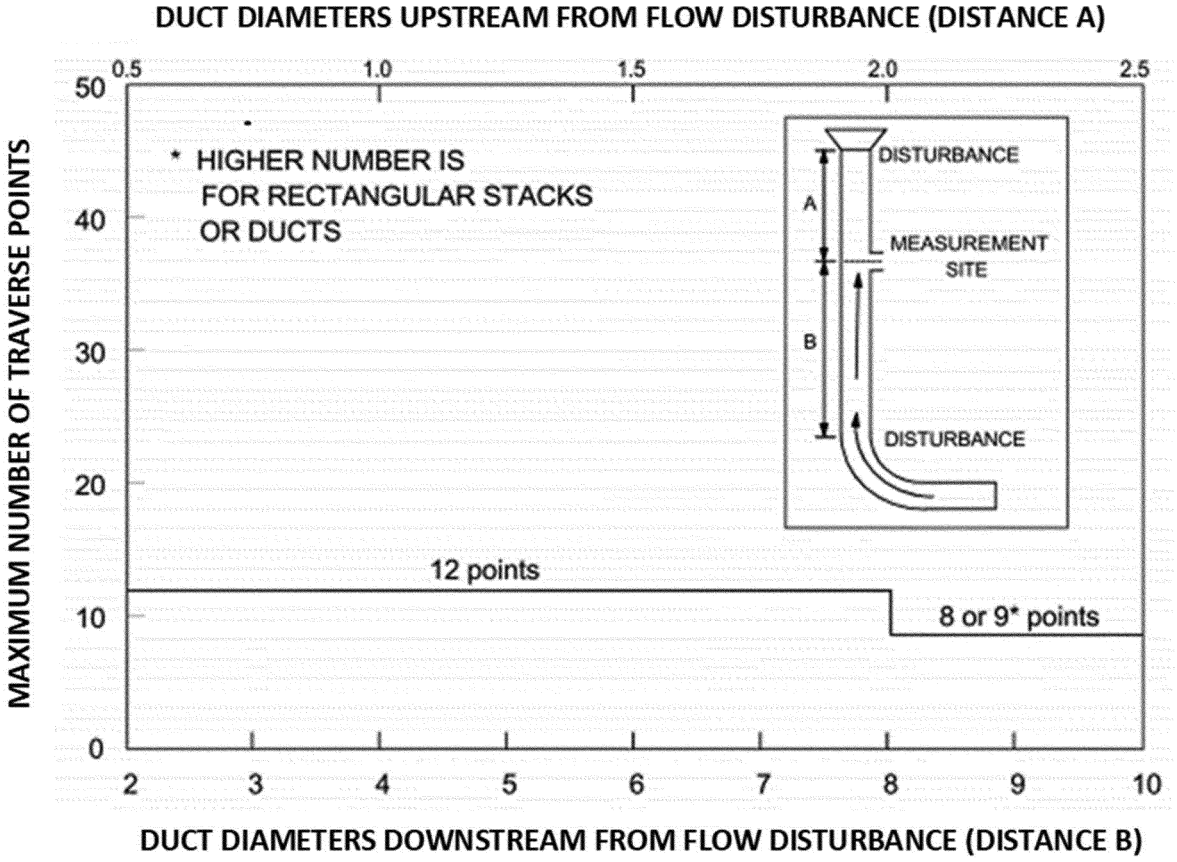

Figure 7. Maximum Number of Required Traverse Points

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PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 3. The authority citation for part 60 continues to read as follows:

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

■ 4. Amend § 60.17 by:

■ a. Removing the text ''appendix A–8 to part 60: Method 24,'' and add in its place, ''appendix A–7 to part 60: Method 24,'' everywhere it appears;

■ b. Revising the last sentence in paragraph (a);

■ c. Redesignating paragraph (e)(2) as (e)(3) and adding a new paragraph (e)(2);

■ d. Redesignating paragraphs (h)(192) through (209) as (h)(195) through (212), (h)(174) through (191) as (h)(176) through (193), and (h)(95) through (173) as (h)(96) through (174), respectively;

■ e. Adding new paragraphs (h)(95), (175), and (194);

■ f. Adding paragraphs (j)(3) and (4);

■ g. Revising paragraph (k) introductory text;

■ h. Redesignating paragraphs (k)(2) and (3) as paragraphs (k)(5) and (6) and redesignating paragraph (k)(1) as paragraph (k)(3), respectively;

■ i. Adding new paragraphs (k)(1), (2), and (4);

■ j. Revising newly redesignated paragraph (k)(5); and

■ k. Adding paragraph (l)(2).

The revisions and additions read as follows:

§ 60.17 Incorporations by reference.

(a) * * * For information on the availability of this material at NARA,

email *fedreg.legal@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(e) * * *

(2) API Manual of Petroleum Measurement Standards, Chapter 14—Natural Gas Fluids Measurement, Section 1—Collecting and Handling of Natural Gas Samples for Custody Transfer, 7th Edition, May 2016, IBR approved for § 60.4415(a).

* * * * *

(h) * * *

(95) ASTM D2369–10 (Reapproved 2015)e1, Standard Test Method for Volatile Content of Coatings, (Approved June 1, 2015); IBR approved for appendix A–7 to part 60: Method 24, Section 6.2.

* * * * *

(175) ASTM D5623–19, Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection, (Approved July 1, 2019); IBR approved for § 60.4415(a).

* * * * *

(194) ASTM D7039–15a, Standard Test Method for Sulfur in Gasoline, Diesel Fuel, Jet Fuel, Kerosine, Boideisel, Biodiesel Blends, and Gasoline-Ethanol Blends by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry, (Approved July 1, 2015); IBR approved for § 60.4415(a).

* * * * *

(j) * * *

(3) SW–846–6010D, Inductively Coupled Plasma-Optical Emission Spectrometry, Revision 5, July 2018, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for appendix A–5 to part 60: Method 12.

(4) SW–846–6020B, Inductively Coupled Plasma-Mass Spectrometry, Revision 2, July 2014, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for appendix A–5 to part 60: Method 12.

(k) GPA Midstream Association (formerly known as Gas Processors Association), Sixty Sixty American Plaza, Suite 700, Tulsa, OK 74135.

Note 1 to paragraph (k): Material in this paragraph that is no longer available from GPA may be available through the reseller HIS Markit, 15 Inverness Way East, P.O. Box 1154, Englewood, CO 80150–1154, *https://global.ihs.com/.* For material that is out-of-print, contact EPA's Air and Radiation Docket and Information Center, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460 or *a-and-rdocket@epa.gov.*

(1) GPA Midstream Standard 2140–17 (GPA 2140–17), Liquefied Petroleum Gas Specifications and Test Methods, (Revised 2017), IBR approved for § 60.4415(a).

(2) GPA Midstream Standard 2166–17 (GPA 2166–17), Obtaining Natural Gas Samples for Analysis by Gas Chromatography, (Reaffirmed 2017), IBR approved for § 60.4415(a).

* * * * *

(4) GPA Standard 2174–14 (GPA 2174–14), Obtaining Liquid Hydrocarbon Samples for Analysis by Gas Chromatography, (Revised 2014), IBR approved for § 60.4415(a).

(5) GPA Standard 2261–19 (GPA 2261–19), Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography, (Revised 2019), IBR approved for § 60.4415(a).

* * * * *

(l) * * *

(2) ISO 10715:1997(E), Natural gas—Sampling guidelines, (First Edition, June 1, 1997), IBR approved for § 60.4415(a)

* * * * *

Subpart AAA—Standards of Performance for New Residential Wood Heaters

■ 5. Amend § 60.534 by revising paragraph (h) to read as follows:

§ 60.534 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

* * * * *

(h) The approved test laboratory must allow the manufacturer, the manufacturer's approved third-party certifier, the EPA and delegated state regulatory agencies to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test after the pretest burn has begun. Communications between the manufacturer and laboratory or third-party certifier personnel regarding operation of the wood heater must be limited to written communications transmitted prior to the first pretest burn of the certification test series. During certification tests, the manufacturer may communicate with the third-party certifier, and only in writing, to notify them that the manufacturer has observed a deviation from proper test procedures by the laboratory. All communications must be included in the test documentation required to be submitted pursuant to § 60.533(b)(5) and must be consistent with instructions provided in the owner's manual required under § 60.536(g).

Subpart XXX—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014

■ 6. Amend § 60.766 by revising paragraph (a)(3) to read as follows:

§ 60.766 Monitoring of operations.

* * * * *

(a) * * *

(3) Monitor temperature of the landfill gas on a monthly basis as provided in 60.765(a)(5). The temperature measuring device must be calibrated annually using the procedure in 40 CFR part 60, appendix A–1, Method 2, section 10.3 such that a minimum of two temperature points, bracket within 10 percent of all landfill absolute temperature measurements or two fixed points of ice bath and boiling water, corrected for barometric pressure, are used.

* * * * *

Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units

■ 7. Amend § 60.2110 by revising paragraphs (i) introductory text, (i)(1), and (i)(2) introductory text to read as follows:

§ 60.2110 What operating limits must I meet and by when?

* * * * *

(i) If you use a PM CPMS to demonstrate continuing compliance, you must establish your PM CPMS operating limit and determine compliance with it according to paragraphs (i)(1) through (5) of this section:

(1) Determine your operating limit as the average PM CPMS output value recorded during the performance test or at a PM CPMS output value corresponding to 75 percent of the emission limit if your PM performance test demonstrates compliance below 75 percent of the emission limit. You must verify an existing or establish a new operating limit after each repeated performance test. You must repeat the performance test annually and reassess and adjust the site-specific operating limit in accordance with the results of the performance test:

(i) Your PM CPMS must provide a 4–20 milliamp output, or digital equivalent, and the establishment of its relationship to manual reference

method measurements must be determined in units of milliamps;

(ii) Your PM CPMS operating range must be capable of reading PM concentrations from zero to a level equivalent to at least two times your allowable emission limit. If your PM CPMS is an auto-ranging instrument capable of multiple scales, the primary range of the instrument must be capable of reading PM concentration from zero to a level equivalent to two times your allowable emission limit; and

(iii) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record and average all milliamp output values, or their digital equivalent, from the PM CPMS for the periods corresponding to the compliance test runs (*e.g.,* average all your PM CPMS output values for three corresponding Method 5 or Method 29 test runs).

(2) If the average of your three PM performance test runs are below 75 percent of your PM emissions limit, you must calculate an operating limit by establishing a relationship of PM CPMS signal to PM concentration using the PM CPMS instrument zero, the average PM CPMS output values corresponding to the three compliance test runs, and the average PM concentration from the Method 5 or Method 29 performance test with the procedures in (i)(1) through (5) of this section:

* * * * *

■ 8. Amend § 60.2145 by revising paragraphs (j) introductory text and (y)(3) to read as follows:

§ 60.2145 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

* * * * *

(j) For waste-burning kilns, you must conduct an annual performance test for particulate matter, cadmium, lead, carbon monoxide, dioxins/furans and hydrogen chloride as listed in Table 7 of this subpart, unless you choose to demonstrate initial and continuous compliance using CEMS, as allowed in paragraph (u) of this section. If you do not use an acid gas wet scrubber or dry scrubber, you must determine compliance with the hydrogen chloride emissions limit using a HCl CEMS according to the requirements in paragraph (j)(1) of this section. You must determine compliance with the mercury emissions limit using a mercury CEMS or an integrated sorbent trap monitoring system according to paragraph (j)(2) of this section. You must determine compliance with nitrogen oxides and sulfur dioxide using CEMS. You must determine continuing compliance with the particulate matter emissions limit using a PM CPMS according to paragraph (x) of this section.

* * * * *

(y) * * *

(3) For purposes of determining the combined emissions from kilns equipped with an alkali bypass or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS or PM CPMS on the alkali bypass stack or in-line coal mill stack, the results of the initial and subsequent performance test can be used to demonstrate compliance with the relevant emissions limit. A performance test must be conducted on an annual basis (no later than 13 calendar months following the previous performance test).

■ 9. Revise § 60.2150 to read as follows:

§ 60.2150 By what date must I conduct the annual performance test?

You must conduct annual performance tests no later than 13 calendar months following the previous performance test.

■ 10. Amend § 60.2210 by revising the introductory text and adding paragraph (p) to read as follows:

§ 60.2210 What information must I include in my annual report?

The annual report required under § 60.2205 must include the items listed in paragraphs (a) through (p) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 60.2215, 60.2220, and 60.2225:

* * * * *

(p) For energy recovery units, include the annual heat input and average annual heat input rate of all fuels being burned in the unit to verify which subcategory of energy recovery unit applies.

■ 11. Table 6 to subpart CCCC of part 60 is revised to read as follows:

TABLE 6 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR ENERGY RECOVERY UNITS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013

For the air pollutant	You must meet this emission limitation [1]		Using this averaging time [2]	And determining compliance using this method [2]
	Liquid/gas	Solids		
Cadmium	0.023 milligrams per dry standard cubic meter.	Biomass—0.0014 milligrams per dry standard cubic meter. Coal—0.0017 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	35 parts per million dry volume	Biomass—240 parts per million dry volume. Coal—95 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxin/furans (Total Mass Basis).	No Total Mass Basis limit, must meet the toxic equivalency basis limit below.	Biomass—0.52 nanograms per dry standard cubic meter. Coal—5.1 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.093 nanograms per dry standard cubic meter.	Biomass—0.076 nanograms per dry standard cubic meter.[3] Coal—0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 of appendix A–7 of this part).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods.	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).	Fugitive ash.
Hydrogen chloride	14 parts per million dry volume	Biomass—0.20 parts per million dry volume. Coal—58 parts per million dry volume.	3-run average (For Method 26, collect a minimum volume of 360 liters per run. For Method 26A, collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).

TABLE 6 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR ENERGY RECOVERY UNITS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013—Continued

For the air pollutant	You must meet this emission limitation [1]		Using this averaging time [2]	And determining compliance using this method [2]
	Liquid/gas	Solids		
Lead	0.096 milligrams per dry standard cubic meter.	Biomass—0.014 milligrams per dry standard cubic meter. Coal—0.057 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.00056 milligrams per dry standard cubic meter.	Biomass—0.0022 milligrams per dry standard cubic meter. Coal—0.013 milligrams per dry standard cubic meter.	3-run average (collect enough volume to meet an in-stack detection limit data quality objective of 0.03 ug/dscm).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[3]
Nitrogen oxides	76 parts per million dry volume	Biomass—290 parts per million dry volume. Coal—460 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter (filterable).	110 milligrams per dry standard cubic meter.	Biomass—5.1 milligrams per dry standard cubic meter. Coal—130 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).
Sulfur dioxide	720 parts per million dry volume	Biomass—7.3 parts per million dry volume. Coal—850 parts per million dry volume.	3-run average (for Method 6, collect a minimum of 60 liters, for Method 6C, 1 hour minimum sample time per run).	Performance test (Method 6 or 6C at 40 CFR part 60, appendix A–4).

[1] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Basis limit or the toxic equivalency basis limit.

[2] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §§ 60.2145 and 60.2165. As prescribed in § 60.2145(u), if you use a CEMS or an integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[3] Incorporated by reference, *see* § 60.17.

■ 12. Table 7 to subpart CCCC of part 60 is revised to read as follows:

TABLE 7 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR WASTE-BURNING KILNS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013

For the air pollutant	You must meet this emission limitation [1]	Using this averaging time [2]	And determining compliance using this method [2, 3]
Cadmium	0.0014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	90 (long kilns)/190 (preheater/precalciner) parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis).	0.51 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	3.0 parts per million dry volume	3-run average (1 hour minimum sample time per run) or 30-day rolling average if HCl CEMS is being used.	If a wet scrubber or dry scrubber is used, performance test (Method 321 at 40 CFR part 63, appendix A). If a wet scrubber or dry scrubber is not used, HCl CEMS as specified in § 60.2145(j).
Lead	0.014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0037 milligrams per dry standard cubic meter. *Or* 21 pounds/million tons of clinker [3].	30-day rolling average	Mercury CEMS or integrated sorbent trap monitoring system (performance specification 12A or 12B, respectively, of appendix B and procedure 5 of appendix F of this part), as specified in § 60.2145(j).
Nitrogen oxides	200 parts per million dry volume	30-day rolling average	Nitrogen oxides CEMS (performance specification 2 of appendix B and procedure 1 of appendix F of this part).
Particulate matter (filterable).	4.9 milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix–8).
Sulfur dioxide	28 parts per million dry volume	30-day rolling average	Sulfur dioxide CEMS (performance specification 2 of appendix B and procedure 1 of appendix F of this part).

[1] All emission limitations are measured at 7 percent oxygen (except for CEMS and integrated sorbent trap monitoring system data during startup and shutdown), dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Basis limit or the toxic equivalency basis limit.

[2] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §§ 60.2145 and 60.2165. As prescribed in § 60.2145(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[3] Alkali bypass and in-line coal mill stacks are subject to performance testing only, as specified in § 60.2145(y)(3). They are not subject to the CEMS, integrated sorbent trap monitoring system, or CPMS requirements that otherwise may apply to the main kiln exhaust.

Subpart DDDD—Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units

■ 13. Amend § 60.2675 by revising the introductory text to paragraphs (i) introductory text, (i)(1), and (i)(2) introductory text to read as follows:

§ 60.2675 What operating limits must I meet and by when?

* * * * *

(i) If you use a PM CPMS to demonstrate continuing compliance, you must establish your PM CPMS operating limit and determine compliance with it according to paragraphs (i)(1) through (5) of this section:

(1) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record all hourly average output values (milliamps, or the digital signal equivalent) from the PM CPMS for the periods corresponding to the test runs (*e.g.,* three 1-hour average PM CPMS output values for three 1-hour test runs):

(i) Your PM CPMS must provide a 4–20 milliamp output, or the digital signal equivalent, and the establishment of its relationship to manual reference method measurements must be determined in units of milliamps or digital bits;

(ii) Your PM CPMS operating range must be capable of reading PM concentrations from zero to a level equivalent to at least two times your allowable emission limit. If your PM CPMS is an auto-ranging instrument capable of multiple scales, the primary range of the instrument must be capable of reading PM concentration from zero to a level equivalent to two times your allowable emission limit; and

(iii) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record and average all milliamp output values, or their digital equivalent, from the PM CPMS for the periods corresponding to the compliance test runs (*e.g.,* average all your PM CPMS output values for the three corresponding Method 5 or Method 29 p.m. test runs).

(2) If the average of your three PM performance test runs are below 75 percent of your PM emission limit, you must calculate an operating limit by establishing a relationship of PM CPMS signal to PM concentration using the PM CPMS instrument zero, the average PM CPMS output values corresponding to the three compliance test runs, and the average PM concentration from the Method 5 or Method 29 performance test with the procedures in (i)(1)through (5) of this section:

* * * * *

■ 14. Amend § 60.2710 by revising paragraphs (j) introductory text and (y)(3) to read as follows:

§ 60.2710 How do I demonstrate continuous compliance with the amended emission limitations and the operating limits?

* * * * *

(j) For waste-burning kilns, you must conduct an annual performance test for the pollutants (except mercury and hydrogen chloride if no acid gas wet scrubber or dry scrubber is used) listed in Table 8 of this subpart, unless you choose to demonstrate initial and continuous compliance using CEMS, as allowed in paragraph (u) of this section. If you do not use an acid gas wet scrubber or dry scrubber, you must determine compliance with the hydrogen chloride emissions limit using a HCl CEMS according to the requirements in paragraph (j)(1) of this section. You must determine compliance with the mercury emissions limit using a mercury CEMS or an integrated sorbent trap monitoring system according to paragraph (j)(2) of this section. You must determine continuing compliance with particulate matter using a PM CPMS according to paragraph (x) of this section.

* * * * *

(y) * * *

(3) For purposes of determining the combined emissions from kilns equipped with an alkali bypass or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS or PM CPMS on the alkali bypass stack or in-line coal mill stack, the results of the initial and subsequent performance test can be used to demonstrate compliance with the relevant emissions limit. A performance test must be conducted on an annual basis (no later than 13 calendar months following the previous performance test).

■ 15. Revise § 60.2715 to read as follows:

§ 60.2715 By what date must I conduct the annual performance test?

You must conduct annual performance tests no later than 13 calendar months following the previous performance test.

■ 16. Table 7 to subpart DDDD of part 60 is revised to read as follows:

TABLE 7 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO ENERGY RECOVERY UNITS AFTER MAY 20, 2011

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]		Using this averaging time [3]	And determining compliance using this method [3]
	Liquid/gas	Solids		
Cadmium	0.023 milligrams per dry standard cubic meter.	Biomass—0.0014 milligrams per dry standard cubic meter. Coal—0.0017 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	35 parts per million dry volume ..	Biomass—260 parts per million dry volume. Coal—95 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis).	2.9 nanograms per dry standard cubic meter.	Biomass—0.52 nanograms per dry standard cubic meter. Coal—5.1 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meter).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.32 nanograms per dry standard cubic meter.	Biomass—0.12 nanograms per dry standard cubic meter. Coal—0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	14 parts per million dry volume ..	Biomass—0.20 parts per million dry volume. Coal—58 parts per million dry volume.	3-run average (for Method 26, collect a minimum of 120 liters; for Method 26A, collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).

TABLE 7 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO ENERGY RECOVERY UNITS AFTER MAY 20, 2011—Continued

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]		Using this averaging time [3]	And determining compliance using this method [3]
	Liquid/gas	Solids		
Lead	0.096 milligrams per dry standard cubic meter.	Biomass—0.014 milligrams per dry standard cubic meter. Coal—0.057 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0024 milligrams per dry standard cubic meter.	Biomass—0.0022 milligrams per dry standard cubic meter. Coal—0.013 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008) [4], collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[4]
Nitrogen oxides	76 parts per million dry volume ..	Biomass—290 parts per million dry volume. Coal—460 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter filterable.	110 milligrams per dry standard cubic meter.	Biomass—11 milligrams per dry standard cubic meter. Coal—130 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).
Sulfur dioxide	720 parts per million dry volume	Biomass—7.3 parts per million dry volume. Coal—850 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods.	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[1] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.

[2] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

[3] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §§ 60.2710 and 60.2730. As prescribed in § 60.2710(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[4] Incorporated by reference, see § 60.17.

■ 17. Table 8 to subpart DDDD of part 60 is revised to read as follows:

TABLE 8 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO WASTE-BURNING KILNS AFTER MAY 20, 2011

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]	Using this averaging time [3]	And determining compliance using this method [3 4]
Cadmium	0.0014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Carbon monoxide	110 (long kilns)/790 (preheater/precalciner) parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis).	1.3 nanograms per dry standard cubic meter	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	3.0 parts per million dry volume	3-run average (collect a minimum volume of 1 dry standard cubic meter), or 30-day rolling average if HCl CEMS is being used.	If a wet scrubber or dry scrubber is used, performance test (Method 321 at 40 CFR part 63, appendix A of this part). If a wet scrubber or dry scrubber is not used, HCl CEMS as specified in § 60.2710(j).
Lead	0.014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Mercury	0.011 milligrams per dry standard cubic meter. *Or* 58 pounds/million tons of clinker.	30-day rolling average	Mercury CEMS or integrated sorbent trap monitoring system (performance specification 12A or 12B, respectively, of appendix B and procedure 5 of appendix F of this part), as specified in § 60.2710(j).
Nitrogen oxides	630 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter filterable.	13.5 milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix–8).

TABLE 8 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO WASTE-BURNING KILNS AFTER MAY 20, 2011—Continued

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]	Using this averaging time [3]	And determining compliance using this method [3 4]
Sulfur dioxide	600 parts per million dry volume	3-run average (for Method 6, collect a minimum of 20 liters; for Method 6C, 1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).

[1] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.
[2] All emission limitations are measured at 7 percent oxygen (except for CEMS and integrated sorbent trap monitoring system data during startup and shutdown), dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.
[3] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §§ 60.2710 and 60.2730. As prescribed in § 60.2710(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.
[4] Alkali bypass and in-line coal mill stacks are subject to performance testing only, as specified in § 60.2710(y)(3). They are not subject to the CEMS, integrated sorbent trap monitoring system, or CPMS requirements that otherwise may apply to the main kiln exhaust.

Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

■ 18. Table 2 to subpart JJJJ of part 60 is revised to read as follows:

As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load].

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS

For each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary SI internal combustion engine demonstrating compliance according to § 60.4244.	a. Limit the concentration of NO_X in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for NO_X, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005) [a d].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 2C of 40 CFR part 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	(c) Measurements to determine the exhaust flowrate must be made (1) at the same time as the measurement for NO_X concentration or, alternatively (2) according to the option in Section 11.1.2 of Method 1A of 40 CFR part 60, Appendix A–1, if applicable.
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A, [e] or ASTM Method D6348–03 [d e].	(d) Measurements to determine moisture must be made at the same time as the measurement for NO_X concentration.
		v. Measure NO_X at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device	(5) Method 7E of 40 CFR part 60, appendix A–4, ASTM Method D6522–00 (Reapproved 2005), [a d] Method 320 of 40 CFR part 63, appendix A, [e] or ASTM Method D6348–03 [d e].	(e) Results of this test consist of the average of the three 1-hour or longer runs.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each	Complying with the requirement to	You must	Using	According to the following requirements
	b. Limit the concentration of CO in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for CO, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B[b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005)[a d].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for CO concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 2C of 40 CFR 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	(c) Measurements to determine the exhaust flowrate must be made (1) at the same time as the measurement for CO concentration or, alternatively (2) according to the option in Section 11.1.2 of Method 1A of 40 CFR part 60, Appendix A–1, if applicable.
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A,[e] or ASTM Method D6348–03[d e].	(d) Measurements to determine moisture must be made at the same time as the measurement for CO concentration.
		v. Measure CO at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device	(5) Method 10 of 40 CFR part 60, appendix A4, ASTM Method D6522–00 (Reapproved 2005),[a d e] Method 320 of 40 CFR part 63, appendix A,[e] or ASTM Method D6348–03[d e].	(e) Results of this test consist of the average of the three 1-hour or longer runs.
	c. Limit the concentration of VOC in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for VOC, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B[b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005)[a d].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for VOC concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 2C of 40 CFR 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	(c) Measurements to determine the exhaust flowrate must be made (1) at the same time as the measurement for VOC concentration or, alternatively (2) according to the option in Section 11.1.2 of Method 1A of 40 CFR part 60, Appendix A–1, if applicable.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each	Complying with the requirement to	You must	Using	According to the following requirements
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and v. Measure VOC at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A,[e] or ASTM Method D6348–03[d e]. (5) Methods 25A and 18 of 40 CFR part 60, appendices A–6 and A–7, Method 25A with the use of a hydrocarbon cutter as described in 40 CFR 1065.265, Method 18 of 40 CFR part 60, appendix A–6,[c e] Method 320 of 40 CFR part 63, appendix A,[e] or ASTM Method D6348–03[d e].	(d) Measurements to determine moisture must be made at the same time as the measurement for VOC concentration. (e) Results of this test consist of the average of the three 1-hour or longer runs.

[a] Also, you may petition the Administrator for approval to use alternative methods for portable analyzer.
[b] You may use ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, for measuring the O_2 content of the exhaust gas as an alternative to EPA Method 3B. AMSE PTC 19.10–1981 incorporated by reference, see 40 CFR 60.17
[c] You may use EPA Method 18 of 40 CFR part 60, appendix A–6, provided that you conduct an adequate pre-survey test prior to the emissions test, such as the one described in OTM 11 on EPA's website (*http://www.epa.gov/ttn/emc/prelim/otm11.pdf*).
[d] Incorporated by reference; see 40 CFR 60.17.
[e] You must meet the requirements in § 60.4245(d).

Subpart KKKK—Standards of Performance for Stationary Combustion Turbines

■ 19. Amend § 60.4415 by revising paragraph (a) introductory text, redesignating paragraphs (a)(1) through (3) as paragraphs (a)(2) through (4), adding new paragraph (a)(1), and revising the newly redesignated paragraph (a)(2) to read as follows:

§ 60.4415 How do I conduct the initial and subsequent performance tests for sulfur?

(a) You must conduct an initial performance test, as required in § 60.8. Subsequent SO_2 performance tests shall be conducted on an annual basis (no more than 14 calendar months following the previous performance test). There are four methodologies that you may use to conduct the performance tests.

(1) The use of a current, valid purchase contract, tariff sheet, or transportation contract for the fuel specifying the maximum total sulfur content of all fuels combusted in the affected facility. Alternately, the fuel sampling data specified in section 2.3.1.4 or 2.3.2.4 of appendix D to part 75 of this chapter may be used.

(2) Periodically determine the sulfur content of the fuel combusted in the turbine, a representative fuel sample may be collected either by an automatic sampling system or manually. For automatic sampling, follow ASTM D5287 (incorporated by reference, see § 60.17) for gaseous fuels or ASTM D4177 (incorporated by reference, see § 60.17) for liquid fuels. For manual sampling of gaseous fuels, follow API Manual of Petroleum Measurement Standards, Chapter 14, Section 1, GPA 2166, or ISO 10715 (all incorporated by reference, see § 60.17). For manual sampling of liquid fuels, follow GPA 2174 or the procedures for manual pipeline sampling in section 14 of ASTM D4057 (both incorporated by reference, see § 60.17). The fuel analyses of this section may be performed either by you, a service contractor retained by you, the fuel vendor, or any other qualified agency. Analyze the samples for the total sulfur content of the fuel using:

(i) For liquid fuels, ASTM D129, or alternatively D1266, D1552, D2622, D4294, D5453, D5623, or D7039 (all incorporated by reference, see § 60.17); or

(ii) For gaseous fuels, ASTM D1072, or alternatively D3246, D4084, D4468, D4810, D6228, D6667, or GPA 2140, 2261, or 2377 (all incorporated by reference, see § 60.17).

* * * * *

Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces

■ 20. Amend § 60.5476 by revising paragraph (i) to read as follows:

§ 60.5476 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

* * * * *

(i) The approved test laboratory must allow the manufacturer, the manufacturer's approved third-party certifier, the EPA and delegated state regulatory agencies to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test after the pretest burn has begun. Communications between the manufacturer and laboratory or third-party certifier personnel regarding operation of the central heater must be limited to written communications transmitted prior to the first pretest burn of the certification test series. During certification tests, the manufacturer may communicate with the third-party certifier, and only in writing to notify them that the manufacturer has observed a deviation from proper test procedures by the laboratory. All communications must be included in the test documentation required to be submitted pursuant to § 60.5475(b)(5) and must be consistent with instructions provided in the owner's manual required under § 60.5478(f).

■ 21. Amend Appendix A–3 to part 60 by:

■ a. In Method 4, revising sections ''2.1'', ''6.1.5'', ''8.1.2.1'', ''8.1.3'', ''8.1.3.2.1'', ''8.1.3.2.2'', ''8.1.4.2'', ''9.1'', ''11.1'', ''11.2'', ''12.1.1'', ''12.1.2'', ''12.1.3'', ''12.2.1'', and ''12.2.2'' and ''Figure 4–4'' and ''Figure 4–5''; and

■ b. In Method 5, revising sections ''6.1.1.8'', ''6.2.4'', ''6.2.5'', ''8.1.2'', ''8.7.6.4'', ''12.1'', ''12.3'', ''12.4'', ''12.11.1'', ''12.11.2'', ''16.1.1.4'', and ''16.2.3.3'' and ''Figure 5–6''.

The revisions read as follows:

Appendix A–3 to Part 60—Test Methods 4 Through 5I

* * * * *

Method 4—Determination of Moisture Content in Stack Gases

* * * * *

2.1 A gas sample is extracted at a constant rate from the source; moisture is removed from the sample stream and determined gravimetrically.

* * * * *

6.1.5 Barometer and Balance. Same as Method 5, sections 6.1.2 and 6.2.5, respectively.

* * * * *

8.1.2.1 Transfer water into the first two impingers, leave the third impinger empty and add silica gel to the fourth impinger. Weigh the impingers before sampling and record the weight to the nearest 0.5g at a minimum.

* * * * *

8.1.3 Leak-Check Procedures.

8.1.3.1 Leak Check of Metering System Shown in Figure 4–1. That portion of the sampling train from the pump to the orifice meter should be leak-checked prior to initial use and after each shipment. Leakage after the pump will result in less volume being recorded than is actually sampled. The following procedure is suggested (see Figure 5–2 of Method 5): Close the main valve on the meter box. Insert a one-hole rubber stopper with rubber tubing attached into the orifice exhaust pipe. Disconnect and vent the low side of the orifice manometer. Close off the low side orifice tap. Pressurize the system to 13 to 18 cm (5 to 7 in.) water column by blowing into the rubber tubing. Pinch off the tubing and observe the manometer for one minute. A loss of pressure on the manometer indicates a leak in the meter box; leaks, if present, must be corrected.

8.1.3.2 Pretest Leak Check. A pretest leak check of the sampling train is recommended, but not required. If the pretest leak check is conducted, the following procedure should be used.

8.1.3.2.1 After the sampling train has been assembled, turn on and set the filter and probe heating systems to the desired operating temperatures. Allow time for the temperatures to stabilize.

8.1.3.2.2 Leak-check the train by first plugging the inlet to the filter holder and pulling a 380 mm (15 in.) Hg vacuum. Then connect the probe to the train, and leak-check at approximately 25 mm (1 in.) Hg vacuum; alternatively, the probe may be leak-checked with the rest of the sampling train, in one step, at 380 mm (15 in.) Hg vacuum. Leakage rates in excess of 4 percent of the average sampling rate or 0.00057 m^3/min (0.020 cfm), whichever is less, are unacceptable.

8.1.3.2.3 Start the pump with the bypass valve fully open and the coarse adjust valve completely closed. Partially open the coarse adjust valve, and slowly close the bypass valve until the desired vacuum is reached. Do not reverse the direction of the bypass valve, as this will cause water to back up into the filter holder. If the desired vacuum is exceeded, either leak-check at this higher vacuum, or end the leak check and start over.

8.1.3.2.4 When the leak check is completed, first slowly remove the plug from the inlet to the probe, filter holder, and immediately turn off the vacuum pump. This prevents the water in the impingers from being forced backward into the filter holder and the silica gel from being entrained backward into the third impinger.

8.1.3.3 Leak Checks During Sample Run. If, during the sampling run, a component (*e.g.,* filter assembly or impinger) change becomes necessary, a leak check shall be conducted immediately before the change is made. The leak check shall be done according to the procedure outlined in section 8.1.3.2 above, except that it shall be done at a vacuum equal to or greater than the maximum value recorded up to that point in the test. If the leakage rate is found to be no greater than 0.00057 m^3/min (0.020 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction will need to be applied to the total volume of dry gas metered; if, however, a higher leakage rate is obtained, either record the leakage rate and plan to correct the sample volume as shown in section 12.3 of Method 5, or void the sample run.

Note: Immediately after component changes, leak checks are optional. If such leak checks are done, the procedure outlined in section 8.1.3.2 above should be used.

8.1.3.4 Post-Test Leak Check. A leak check of the sampling train is mandatory at the conclusion of each sampling run. The leak check shall be performed in accordance with the procedures outlined in section 8.1.3.2, except that it shall be conducted at a vacuum equal to or greater than the maximum value reached during the sampling run. If the leakage rate is found to be no greater than 0.00057 m^3 min (0.020 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction need be applied to the total volume of dry gas metered. If, however, a higher leakage rate is obtained, either record the leakage rate and correct the sample volume as shown in section 12.3 of Method 5 or void the sampling run.

* * * * *

8.1.4.2 At the end of the sample run, close the coarse adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final DGM meter reading, and conduct a post-test leak check, as outlined in section 8.1.3.4.

* * * * *

9.1 Miscellaneous Quality Control Measures.

Section	Quality control measure	Effect
Section 8.1.3.2.2	Leak rate of the sampling system cannot exceed four percent of the average sampling rate or 0.00057 m^3/min (0.020 cfm).	Ensures the accuracy of the volume of gas sampled. (Reference Method).
Section 8.2.1	Leak rate of the sampling system cannot exceed two percent of the average sampling rate.	Ensures the accuracy of the volume of gas sampled. (Approximation Method).

* * * * *

11.1 Reference Method. Weigh the impingers after sampling and record the difference in weight to the nearest 0.5 g at a minimum. Determine the increase in weight of the silica gel (or silica gel plus impinger) to the nearest 0.5 g at a minimum. Record this information (see example data sheet, Figure 4–5), and calculate the moisture content, as described in section 12.0.

11.2 Approximation Method. Weigh the contents of the two impingers, and measure the weight to the nearest 0.5 g.

* * * * *

12.1.1 Nomenclature.

B_{ws} = Proportion of water vapor, by volume, in the gas stream.

M_w = Molecular weight of water, 18.015 g/g-mole (18.015 lb/lb-mole).

P_m = Absolute pressure (for this method, same as barometric pressure) at the dry gas meter, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 (mm Hg)(m^3)/(g-mole)(°K) for metric units and 21.85 (in. Hg)(ft^3)/(lb-mole) (°R) for English units.

T_m = Absolute temperature at meter, °K (°R).

T_{std} = Standard absolute temperature, 293.15 °K (527.67 °R).

V_f = Final weight of condenser water plus impinger, g.

V_i = Initial weight, if any, of condenser water plus impinger, g.

V_m = Dry gas volume measured by dry gas meter, dcm (dcf).

$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm (dscf).

$V_{wc(std)}$ = Volume of water vapor condensed, corrected to standard conditions, scm (scf).

$V_{wsg(std)}$ = Volume of water vapor collected in silica gel, corrected to standard conditions, scm (scf).

W_f = Final weight of silica gel or silica gel plus impinger, g.

W_i = Initial weight of silica gel or silica gel plus impinger, g.

Y = Dry gas meter calibration factor.

ΔV_m = Incremental dry gas volume measured by dry gas meter at each traverse point, dcm (dcf).

12.1.2 Volume of Water Vapor Condensed.

$$V_{wc(std)} = \frac{(Vf - Vi)RT_{std}}{P_{std}M_w} \qquad Eq\ 4-1$$

$$= K_1(Vf - Vi)$$

Where:

K_1 = 0.001335 m^3/g for metric units,
= 0.04716 ft^3/g for English units.

12.1.3 * * *

K_3 = 0.001335 m^3/g for metric units,
= 0.04716 ft^3/g for English units.

* * * * *

12.2.1 Nomenclature.

B_{wm} = Approximate proportion by volume of water vapor in the gas stream leaving the second impinger, 0.025.

B_{ws} = Water vapor in the gas stream, proportion by volume.

M_w = Molecular weight of water, 18.015 g/g-mole (18.015 lb/lb-mole).

P_m = Absolute pressure (for this method, same as barometric pressure) at the dry gas meter, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 [(mm Hg)(m^3)]/[(g-mole)(K)] for metric units and 21.85 [(in. Hg)(ft^3)]/[(lb-mole)(°R)] for English units.

T_m = Absolute temperature at meter, °K (°R).

T_{std} = Standard absolute temperature, 293.15 °K (527.67 °R).

V_f = Final weight of condenser water plus impinger, g.

V_i = Initial weight, if any, of condenser water plus impinger, g.

V_m = Dry gas volume measured by dry gas meter, dcm (dcf).

$V_{m(std)}$ = Dry gas volume measured by dry gas meter, corrected to standard conditions, dscm (dscf).

$V_{wc(std)}$ = Volume of water vapor condensed, corrected to standard conditions, scm (scf).

Y = Dry gas meter calibration factor.

12.2.2 Volume of Water Vapor Collected.

$$V_{wc(std)} = \frac{(Vf - Vi)RT_{std}}{P_{std}M_w} \qquad Eq\ 4-5$$

$$= K_5(Vf - Vi)$$

K_5 = 0.001335 m^3/g for metric units,
= 0.04716 ft^3/g for English units.

* * * * *

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Clock Time	Gas Volume through meter (Vm), (m^3 or ft^3)	Rate meter setting (m^3/min or ft^3/min)	Meter temperature (°C or °F)

Figure 4-4. Example Moisture Determination Field Data Sheet – Approximation Method

	Impinger weight (g)	Silica gel weight (g)
Final		
Initial		
Difference		

Figure 4-5. Analytical Data – Reference Method

BILLING CODE 6560–50–C

Method 5—Determination of Particulate Matter Emissions From Stationary Sources

* * * * *

6.1.1.8 Condenser. The following system shall be used to determine the stack gas moisture content: Four impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. The first, third, and fourth impingers shall be of the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm (½ in.) ID glass tube extending to about 1.3 cm (½ in.) from the bottom of the flask. The second impinger shall be of the Greenburg-Smith design with the standard tip. Modifications (*e.g.,* using flexible connections between the impingers, using materials other than glass, or using flexible vacuum lines to connect the filter holder to the condenser) may be used, subject to the approval of the Administrator. The first and second impingers shall contain known quantities of water (Section 8.3.1), the third shall be empty, and the fourth shall contain a known weight of silica gel, or equivalent desiccant. A temperature sensor, capable of measuring temperature to within 1 °C (2 °F) shall be placed at the outlet of the fourth impinger for monitoring purposes. Alternatively, any system that cools the sample gas stream and allows measurement of the water condensed and moisture leaving the condenser, each to within 0.5 g may be used, subject to the approval of the Administrator. An acceptable technique involves the measurement of condensed water either gravimetrically and the determination of the moisture leaving the condenser by: (1) Monitoring the temperature and pressure at the exit of the condenser and using Dalton's law of partial pressures; or (2) passing the sample gas stream through a tared silica gel (or equivalent desiccant) trap with exit gases kept below 20 °C (68 °F) and determining the weight gain. If means other than silica gel are used to determine the amount of moisture leaving the condenser, it is recommended that silica gel (or equivalent) still be used between the condenser system and pump to prevent moisture condensation in the pump and metering devices and to avoid the need to make corrections for moisture in the metered volume.

Note: If a determination of the PM collected in the impingers is desired in addition to moisture content, the impinger system described above shall be used, without modification. Individual States or control agencies requiring this information shall be contacted as to the sample recovery and analysis of the impinger contents.

* * * * *

6.2.4 Petri dishes. For filter samples; glass, polystyrene, or polyethylene, unless otherwise specified by the Administrator.

6.2.5 Balance. To measure condensed water to within 0.5 g at a minimum.

* * * * *

8.1.2 Check filters visually against light for irregularities, flaws, or pinhole leaks. Label filters of the proper diameter on the back side near the edge using numbering machine ink. As an alternative, label the shipping containers (glass, polystyrene or polyethylene petri dishes), and keep each filter in its identified container at all times except during sampling.

* * * * *

8.7.6.4 Impinger Water. Treat the impingers as follows: Make a notation of any color or film in the liquid catch. Measure the liquid that is in the first three impingers by weighing it to within 0.5 g at a minimum by using a balance. Record the weight of liquid present. This information is required to calculate the moisture content of the effluent gas. Discard the liquid after measuring and recording the weight, unless analysis of the impinger catch is required (see *Note*, section 6.1.1.8). If a different type of condenser is used, measure the amount of moisture condensed gravimetrically.

* * * * *

12.1 Nomenclature.

A_n = Cross-sectional area of nozzle, m^2 (ft^2).

B_{ws} = Water vapor in the gas stream, proportion by volume.

C_a = Acetone blank residue concentration, mg/mg.

c_s = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dscm (gr/dscf).

I = Percent of isokinetic sampling.

L_1 = Individual leakage rate observed during the leak-check conducted prior to the first component change, m^3/min (ft^3/min)

L_a = Maximum acceptable leakage rate for either a pretest leak-check or for a leak-check following a component change; equal to 0.00057 m^3/min (0.020 cfm) or 4 percent of the average sampling rate, whichever is less.

L_i = Individual leakage rate observed during the leak-check conducted prior to the ''i^{th}'' component change (i = 1, 2, 3 . . . n), m^3/min (cfm).

L_p = Leakage rate observed during the post-test leak-check, m^3/min (cfm).

m_a = Mass of residue of acetone after evaporation, mg.

m_n = Total amount of particulate matter collected, mg.

M_w = Molecular weight of water, 18.015 g/g-mole (18.015 lb/lb-mole).

P_{bar} = Barometric pressure at the sampling site, mm Hg (in. Hg).

P_s = Absolute stack gas pressure, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 ((mm Hg)(m^3))/((K)(g-mole)) {21.85 ((in. Hg) (ft^3))/((°R) (lb-mole))}.

T_m = Absolute average DGM temperature (see Figure 5–3), K (°R).

T_s = Absolute average stack gas temperature (see Figure 5–3), K (°R).

T_{std} = Standard absolute temperature, 293.15 K (527.67 °R).

V_a = Volume of acetone blank, ml.

V_{aw} = Volume of acetone used in wash, ml.

V_{1c} = Total volume of liquid collected in impingers and silica gel (see Figure 5–6), g.

V_m = Volume of gas sample as measured by dry gas meter, dcm (dcf).

$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dscm (dscf).

$V_{w(std)}$ = Volume of water vapor in the gas sample, corrected to standard conditions, scm (scf).

V_s = Stack gas velocity, calculated by Method 2, Equation 2–7, using data obtained from Method 5, m/sec (ft/sec).

W_a = Weight of residue in acetone wash, mg.

Y = Dry gas meter calibration factor.

ΔH = Average pressure differential across the orifice meter (see Figure 5–4), mm H_2O (in. H_2O).

ρ_a = Density of acetone, mg/ml (see label on bottle).

θ = Total sampling time, min.

θ_1 = Sampling time interval, from the beginning of a run until the first component change, min.

θ_i = Sampling time interval, between two successive component changes, beginning with the interval between the first and second changes, min.

θ_p = Sampling time interval, from the final (n^{th}) component change until the end of the sampling run, min.

13.6 = Specific gravity of mercury.

60 = Sec/min.

100 = Conversion to percent.

* * * * *

12.3 * * *

K_1 = 0.38572 °K/mm Hg for metric units, = 17.636 °R/in. Hg for English units.

* * * * *

12.4 Volume of Water Vapor Condensed

$$V_{w(std)} = V_{lc}\frac{RT_{std}}{M_w P_{std}} \qquad \text{Eq. 5-2}$$

$$= K_2 V_{lc}$$

Where:

K_2 = 0.001335 m^3/g for metric units, = 0.04716 ft^3/g for English units.

* * * * *

12.11.1 * * *

Where:

K_4 = 0.003456 ((mm Hg)(m^3))/((ml)(°K)) for metric units,

= 0.002668 ((in. Hg)(ft^3))/((ml)(°R)) for English units.

* * * * *

12.11.2 * * *

Where:

K_5 = 4.3209 for metric units, = 0.09450 for English units.

* * * * *

16.1.1.4 * * *

Where:

K_1 = 0.38572 °K/mm Hg for metric units, = 17.636 °R/in. Hg for English units.

T_{adj} = 273.15 °C for metric units = 459.67 °F for English units.

* * * * *

16.2.3.3 * * *

Where:

K_1 = 0.38572 °K/mm Hg for metric units, = 17.636 °R/in. Hg for English units.

* * * * *

18.0 * * *

Plant ____
Date
Run No.
Filter No.

Amount liquid lost during transport, mg
Acetone blank volume, ml

Acetone blank concentration, mg/mg (Equation 5–4)

Acetone wash blank, mg (Equation 5–5)

Container number	Weight of particulate collected, mg		
	Final weight	Tare weight	Weight gain
1.			
2.			
Total collected particulate			
Less acetone wash blank			
Weight of particulate matter			
	Weight of liquid collected, g		
	Impinger weight	Silica gel weight	
Final			
Initial			
Liquid collected			
Total weight collected			

Figure 5-6. Analytical Data Sheet

* * * * *

■ 22. Amend Appendix A–4 to part 60 in Method 7C by revising section 7.2.11 and in Method 7E by revising section 8.5 introductory text to read as follows:

Appendix A–4 to Part 60—Test Methods 6 Through 10B

* * * * *

Method 7C—Determination of Nitrogen Oxide Emissions From Stationary Sources—Alkaline—Permanganate/Colorimetric Method

* * * * *

7.2.11 Sodium Nitrite ($NaNO_2$) Standard Solution, Nominal Concentration, 1000 µg NO_2 – /ml. Desiccate $NaNO_2$ overnight. Accurately weigh 1.4 to 1.6 g of $NaNO_2$ (assay of 97 percent $NaNO_2$ or greater), dissolve in water, and dilute to 1 liter. Calculate the exact NO_2-concentration using Equation 7C–1 in section 12.2. This solution is stable for at least 6 months under laboratory conditions.

* * * * *

Method 7E—Determination of Nitrogen Oxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

8.5 *Post-Run System Bias Check and Drift Assessment.*

How do I confirm that each sample I collect is valid? After each run, repeat the system bias check or 2-point system calibration error check (for dilution systems) to validate the run. Do not make adjustments to the measurement system (other than to maintain the target sampling rate or dilution ratio) between the end of the run and the completion of the post-run system bias or system calibration error check. Note that for all post-run system bias or 2-point system calibration error checks, you may inject the low-level gas first and the upscale gas last, or vice-versa. If conducting a relative accuracy test or relative accuracy test audit, consisting of nine runs or more, you may risk sampling for up to three runs before performing the post-run bias or system calibration error check provided you pass this test at the conclusion of the group of three runs. A failed post-run bias or system calibration error check in this case will invalidate all runs subsequent to the last passed check. When conducting a performance or compliance test, you must perform a post-run system bias or system calibration error check after each individual test run.

* * * * *

■ 23. Amend Appendix A–5 to part 60, Method 12 by:

■ a. Revising sections ''7.1.2'', ''8.7.1.6'', ''8.7.3.1'', ''8.7.3.3'', ''8.7.3.6'', ''12.1'', ''12.3'', ''16.1'' through ''16.5'';

■ b. Adding sections 16.5.1 and 16.5.2; and

■ c. Removing section 16.6.

The revisions and additions read as follows:

Appendix A–5 to Part 60—Test Methods 11 Through 15A

* * * * *

Method 12—Determination of Inorganic Lead Emissions From Stationary Sources

* * * * *

7.1.2 Silica Gel and Crushed Ice. Same as Method 5, sections 7.1.2 and 7.1.4, respectively.

* * * * *

8.7.1.6 Brush and rinse with 0.1 N HNO_3 the inside of the front half of the filter holder. Brush and rinse each surface three times or more, if needed, to remove visible sample matter. Make a final rinse of the brush and filter holder. After all 0.1 N HNO_3 washings and sample matter are collected in the sample container, tighten the lid on the sample container so that the fluid will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to identify its contents clearly.

* * * * *

8.7.3.1 Cap the impinger ball joints.

* * * * *

8.7.3.3 Treat the impingers as follows: Make a notation of any color or film in the liquid catch. Measure the liquid that is in the first three impingers by weighing it to within 0.5 g at a minimum by using a balance. Record the weight of liquid present. The liquid weight is needed, along with the silica gel data, to calculate the stack gas moisture content (see Method 5, Figure 5–6).

* * * * *

8.7.3.6 Rinse the insides of each piece of connecting glassware for the impingers twice with 0.1 N HNO_3; transfer this rinse into Container No. 4. Do not rinse or brush the glass-fritted filter support. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to identify its contents clearly.

* * * * *

12.1 Nomenclature.

A_m = Absorbance of the sample solution.

A_n = Cross-sectional area of nozzle, m^2 (ft^2).

A_t = Absorbance of the spiked sample solution.

B_{ws} = Water in the gas stream, proportion by volume.

C_a = Lead concentration in standard solution, µg/ml.

C_m = Lead concentration in sample solution analyzed during check for matrix effects, µg/ml.

C_s = Lead concentration in stack gas, dry basis, converted to standard conditions, mg/dscm (gr/dscf).

I = Percent of isokinetic sampling.

L_l = Individual leakage rate observed during the leak-check conducted prior to the first component change, m^3/min (ft^3/min).

L_a = Maximum acceptable leakage rate for either a pretest leak-check or for a leak-check following a component change; equal to 0.00057 m^3/min (0.020 cfm) or 4 percent of the average sampling rate, whichever is less.

L_i = Individual leakage rate observed during the leak-check conducted prior to the ''ith'' component change (i = 1, 2, 3 * * * n), m^3/min (cfm).

L_p = Leakage rate observed during the post-test leak-check, m^3/min (cfm).

m_t = Total weight of lead collected in the sample, µg.

M_w = Molecular weight of water, 18.0 g/g-mole (18.0 lb/lb-mole).

P_{bar} = Barometric pressure at the sampling site, mm Hg (in. Hg).

P_s = Absolute stack gas pressure, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 [(mm Hg) (m^3)]/[(°K) (g-mole)] {21.85 [(in. Hg) (ft^3)]/[(°R) (lb-mole)]}.

T_m = Absolute average dry gas meter temperature (see Figure 5–3 of Method 5), °K (°R).

T_{std} = Standard absolute temperature, 293 °K (528 °R).

v_s = Stack gas velocity, m/sec (ft/sec).

V_m = Volume of gas sample as measured by the dry gas meter, dry basis, m^3 (ft^3).

$V_{m(std)}$ = Volume of gas sample as measured by the dry gas meter, corrected to standard conditions, m^3 (ft^3).

$V_{w(std)}$ = Volume of water vapor collected in the sampling train, corrected to standard conditions, m^3 (ft^3).

Y = Dry gas meter calibration factor.

ΔH = Average pressure differential across the orifice meter (see Figure 5–3 of Method 5), mm H_2O (in. H_2O).

θ = Total sampling time, min.

θ_l = Sampling time interval, from the beginning of a run until the first component change, min.

θ_i = Sampling time interval, between two successive component changes, beginning with the interval between the first and second changes, min.

θ_p = Sampling time interval, from the final (n^{th}) component change until the end of the sampling run, min.

* * * * *

12.3 Dry Gas Volume, Volume of Water Vapor Condensed, and Moisture Content. Using data obtained in this test, calculate $V_{m(std)}$, $V_{w(std)}$, and B_{ws} according to the procedures outlined in Method 5, sections 12.3 through 12.5.

* * * * *

16.1 Simultaneous Determination of Particulate Matter and Lead Emissions. Method 12 may be used to simultaneously determine Pb and particulate matter provided:

(1) A glass fiber filter with a low Pb background is used and this filter is checked, desiccated and weighed per section 8.1 of Method 5,

(2) An acetone rinse, as specified by Method 5, sections 7.2 and 8.7.6.2, is used to remove particulate matter from the probe and inside of the filter holder prior to and kept separate from the 0.1 N HNO_3 rinse of the same components,

(3) The recovered filter, the acetone rinse, and an acetone blank (Method 5, section 7.2) are subjected to the gravimetric analysis of Method 5, sections 6.3 and 11.0 prior to the analysis for Pb as described below, and

(4) The entire train contents, including the 0.1 N HNO_3 impingers, filter, acetone and 0.1 N HNO_3 probe rinses are treated and analyzed for Pb as described in sections 8.0 and 11.0 of this method.

16.2 Filter Location. A filter may be used between the third and fourth impingers provided the filter is included in the analysis for Pb.

16.3 In-Stack Filter. An in-stack filter may be used provided: (1) A glass-lined probe and at least two impingers, each containing 100 ml of 0.1 N HNO_3 after the in-stack filter, are used and (2) the probe and impinger contents are recovered and analyzed for Pb. Recover sample from the nozzle with acetone if a particulate analysis is to be made as described in section 16.1 of this method.

16.4 Inductively Coupled Plasma-Atomic Emission Spectrometry (ICP–AES) Analysis. ICP–AES may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.4.1 Sample collection/recovery, sample loss check, and sample preparation procedures are as defined in sections 8.0, 11.1, and 11.2, respectively, of this method.

16.4.2 Analysis shall be conducted following Method 6010D of SW–846 (incorporated by reference, see § 60.17). The limit of detection for the ICP–AES must be demonstrated according to section 15.0 of Method 301 in appendix A of part 63 of this chapter and must be no greater than one-third of the applicable emission limit. Perform a check for matrix effects according to section 11.5 of this method.

16.5 Inductively Coupled Plasma-Mass Spectrometry (ICP–MS) Analysis. ICP–MS may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.5.1 Sample collection/recovery, sample loss check, and sample preparation procedures are as defined in sections 8.0, 11.1, and 11.2, respectively of this method.

16.5.2 Analysis shall be conducted following Method 6020B of SW–846 (incorporated by reference, see § 60.17). The limit of detection for the ICP–MS must be demonstrated according to section 15.0 of Method 301 in appendix A to part 63 of this chapter and must be no greater than one-third of the applicable emission limit. Use the multipoint calibration curve option in section 10.4 of Method 6020B and perform a check for matrix effects according to section 11.5 of this method.

* * * * *

■ 24. Amend Appendix A–6 to part 60 by:

■ a. In Method 16B by:

■ i. Revising sections 2.1, 6.1, 8.2;

■ ii. Removing section 8.3;

■ iii. Redesignating sections 8.4, 8.4.1, and 8.4.2 as 8.3, 8.3.1, and 8.3.2, respectively;

■ iv. Revising section 11.1; and

■ v. Adding section 11.2; and

■ b. In Method 16C, revising section 13.1.

The revisions and addition read as follows:

Appendix A–6 to Part 60—Test Methods 16 Through 18

* * * * *

Method 16B—Determination of Total Reduced Sulfur Emissions From Stationary Sources

* * * * *

2.1 A gas sample is extracted from the stack. The SO_2 is removed selectively from the sample using a citrate buffer solution. The TRS compounds are then thermally oxidized to SO_2 and analyzed as SO_2 by gas chromatography (GC) using flame photometric detection (FPD).

* * * * *

6.1 Sample Collection. The sampling train is shown in Figure 16B–1. Modifications to the apparatus are accepted provided the system performance check in section 8.3.1 is met.

* * * * *

8.2 Sample Collection. Before any source sampling is performed, conduct a system performance check as detailed in section 8.3.1 to validate the sampling train components and procedures. Although this test is optional, it would significantly reduce the possibility of rejecting tests as a result of failing the post-test performance check. At the completion of the pretest system performance check, insert the sampling probe into the test port making certain that no dilution air enters the stack though the port. Condition the entire system with sample for a minimum of 15 minutes before beginning analysis. If the sample is diluted, determine the dilution factor as in section 10.4 of Method 15.

* * * * *

11.1 Analysis. Inject aliquots of the sample into the GC/FPD analyzer for analysis. Determine the concentration of SO_2 directly from the calibration curves or from the equation for the least-squares line.

11.2 Perform analysis of a minimum of three aliquots or one every 15 minutes, whichever is greater, spaced evenly over the test period.

* * * * *

Method 16C—Determination of Total Reduced Sulfur Emissions From Stationary Sources

* * * * *

13.1 Analyzer Calibration Error. At each calibration gas level (low, mid, and high), the calibration error must either not exceed 5.0 percent of the calibration span or $|C_{Dir} - C_v|$ must be ≤0.5 ppmv.

* * * * *

■ 25. Amend Appendix A–7 to part 6 by:

■ a. In Method 24, revising section 6.2.

■ b. In Method 25C, revising sections 8.4.2, 9.1, 12.5, 12.5.1, and 12.5.2.

The revisions read as follows:

Appendix A–7 to Part 60—Test Methods 19 Through 25E

* * * * *

Method 24—Determinaton of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

* * * * *

6.2 ASTM D 2369–81, 87, 90, 92, 93, 95, or 10. Standard Test Method for Volatile Content of Coatings.

* * * * *

Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in Landfill Gases

* * * * *

8.4.2 Use Method 3C to determine the percent N_2 and O_2 in each cylinder. The presence of N_2 and O_2 indicate either infiltration of ambient air into the landfill gas sample or an inappropriate testing site has been chosen where anaerobic decomposition has not begun. The landfill gas sample is acceptable if the concentration of N_2 is less than 20 percent. Alternatively, the oxygen content of each cylinder must be less than 5 percent. Landfills with 3-year average annual rainfalls equal to or less than 20 inches annual rainfalls samples are acceptable when the N_2 to O_2 concentration ratio is greater than 3.71.

* * * * *

9.1 Miscellaneous Quality Control Measures.

Section	Quality control measure	Effect
8.4.2	If the 3-year average annual rainfall is greater than 20 inches, verify that landfill gas sample contains less than 20 percent N_2 and 5 percent O_2. Landfills with 3-year average annual rainfalls equal to or less than 20 inches annual rainfalls samples are acceptable when the N_2 to O_2 concentration ratio is greater than 3.71.	Ensures that ambient air was not drawn into the landfill gas sample and gas was sampled from an appropriate location. If outside of range, invalidate sample and repeat sample collection.
10.1, 10.2	NMOC analyzer initial and daily performance checks	Ensures precision of analytical results.

* * * * *

12.5 You must correct the NMOC Concentration for the concentration of nitrogen or oxygen based on which gas or gases passes the requirements in section 9.1 or based on the 3-year average annual rainfall based on the closest NOAA land-based station.

12.5.1 NMOC Concentration with nitrogen correction. Use Equation 25C–4 to calculate the concentration of NMOC for each sample tank when the nitrogen concentration is less than 20 percent.

$$C_t = \frac{\frac{P_{tf}}{T_{tf}}}{\left(\frac{P_t}{T_t}-\frac{P_{ti}}{T_{ti}}\right)\left(1-\frac{99}{78}C_{N2}\right)-B_w}\frac{1}{r}\sum_{j=1}^{r}C_{tm(j)} \quad \text{Eq.25C-4}$$

12.5.2 NMOC Concentration with oxygen correction. Use Equation 25C–5 to calculate the concentration of NMOC for each sample tank if the landfill gas oxygen is less than 5 percent and the landfill gas nitrogen concentration is greater than 20 percent, or 3-year average annual rainfall based annual rainfall of less than 20 inches.

$$C_t = \frac{\frac{P_{tf}}{T_{tf}}}{\left(\frac{P_t}{T_t}-\frac{P_{ti}}{T_{ti}}\right)\left(1-\frac{99}{21}C_{Ox}\right)-B_w}\frac{1}{r}\sum_{j=1}^{r}C_{tm(j)} \quad \text{Eq.25C-5}$$

* * * * *

■ 26. Amend Appendix A–8 to part 60 by:

■ a. In Method 26, revising section 8.1.2; and

■ b. In Method 26A, revising sections 6.1.3 and 8.1.5.

The revisions read as follows:

Appendix A–8 to Part 60—Test Methods 26 Through 30B

* * * * *

Method 26—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Non-Isokinetic Method

* * * * *

8.1.2 Adjust the probe temperature and the temperature of the filter and the stopcock (*i.e.,* the heated area in Figure 26–1) to a temperature sufficient to prevent water condensation. This temperature must be maintained between 120 and 134 °C (248 and 273 °F). The temperature should be monitored throughout a sampling run to ensure that the desired temperature is maintained. It is important to maintain a temperature around the probe and filter in this range since it is extremely difficult to purge acid gases off these components. (These components are not quantitatively recovered and, hence, any collection of acid gases on these components would result in potential under reporting of these emissions. The applicable subparts may specify alternative higher temperatures.)

* * * * *

Method 26A—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources—Isokinetic Method

* * * * *

6.1.3 Pitot Tube, Differential Pressure Gauge, Filter Heating System, Filter Temperature Sensor with a glass or Teflon encasement, Metering System, Barometer, Gas Density Determination Equipment. Same as Method 5, sections 6.1.1.3, 6.1.1.4, 6.1.1.6, 6.1.1.7, 6.1.1.9, 6.1.2, and 6.1.3.

* * * * *

8.1.5 Sampling Train Operation. Follow the general procedure given in Method 5, Section 8.5. It is important to maintain a temperature around the probe, filter (and cyclone, if used) between 120 and 134 °C (248 and 273 °F) since it is extremely difficult to purge acid gases off these components. (These components are not quantitatively recovered and hence any collection of acid gases on these components would result in potential under reporting these emissions. The applicable subparts may specify alternative higher temperatures.) For each run, record the data required on a data sheet such as the one shown in Method 5, Figure 5–3. If the condensate impinger becomes too full, it may be emptied, recharged with 50 ml of 0.1 N H2SO4, and replaced during the sample run. The condensate emptied must be saved and included in the measurement of the volume of moisture collected and

included in the sample for analysis. The additional 50 ml of absorbing reagent must also be considered in calculating the moisture. Before the sampling train integrity is compromised by removing the impinger, conduct a leak-check as described in Method 5, section 8.4.2.

* * * * *

■ 27. Amend Appendix B to part 60 by:
■ a. In Performance Specification 4B, revising section 4.5;
■ b. In Performance Specification 5, revising sections 5.0 and 8.1;
■ c. In Performance Specification 6, revising sections 13.1 and 13.2;
■ d. In Performance Specification 8, redesignating sections 8.3, 8.4, and 8.5 as 8.4, 8.5, and 8.6, respectively;
■ e. Adding new section 8.3;
■ f. In Performance Specification 9, revising sections 7.2, 8.3, 8.4, 10.1, 10.2, 13.1, and 13.2;
■ g. Adding section 13.4;
■ h. In Performance Specification 18, revising sections 2.3 and 11.9.1.

The revisions and additions read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

Performance Specification 4B—Specifications and Test Procedures for Carbon Monoxide and Oxygen Continuous Monitoring Systems in Stationary Sources

* * * * *

4.5 *Response Time.* The response time for the CO or O_2 monitor must not exceed 240 seconds.

* * * * *

Performance Specification 5—Specifications and Test Procedures for TRS Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

5.0 Safety

This performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing this performance specification. The CEMS user's manual should be consulted for specific precautions to be taken with regard to the analytical procedures.

* * * * *

8.1 Relative Accuracy Test Procedure. Sampling Strategy for reference method (RM) Tests, Number of RM Tests, and Correlation of RM and CEMS Data are the same as PS 2, sections 8.4.3, 8.4.4, and 8.4.5, respectively.

Note: For Method 16, a sample is made up of at least three separate injects equally spaced over time. For Method 16A, a sample is collected for at least 1 hour. For Method 16B, you must analyze a minimum of three aliquots spaced evenly over the test period.

* * * * *

Performance Specification 6—Specifications and Test Procedures for Continuous Emission Rate Monitoring Systems in Stationary Sources

* * * * *

13.1 Calibration Drift. Since the CERMS includes analyzers for several measurements, the CD shall be determined separately for each analyzer in terms of its specific measurement. The calibration for each analyzer associated with the measurement of flow rate shall not drift or deviate from each reference value of flow rate by more than 3 percent of the respective high-level reference value over the CD test period (*e.g.,* seven-day) associated with the pollutant analyzer. The CD specification for each analyzer for which other PSs have been established (*e.g.,* PS 2 for SO_2 and NO_X), shall be the same as in the applicable PS.

13.2 CERMS Relative Accuracy. Calculate the CERMS Relative Accuracy using Eq. 2–6 of section 12 of Performance Specification 2. The RA of the CERMS shall be no greater than 20 percent of the mean value of the RM's test data in terms of the units of the emission standard, or in cases where the average emissions for the test are less than 50 percent of the applicable standard, substitute the emission standard value in the denominator of Eq. 2–6 in place of the RM.

* * * * *

Performance Specification 8—Performance Specifications for Volatile Organic Compound Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.3 Calibration Drift Test Procedure. Same as section 8.3 of PS 2.

8.4 Reference Method (RM). Use the method specified in the applicable regulation or permit, or any approved alternative, as the RM.

8.5 Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, and Number of RM Tests. Follow PS 2, sections 8.4.3, 8.4.5, and 8.4.4, respectively.

8.6 Reporting. Same as section 8.5 of PS 2.

* * * * *

Performance Specification 9—Specifications and Test Procedures for Gas Chromatographic Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

7.2 Performance Audit Gas. Performance Audit Gas is an independent cylinder gas or cylinder gas mixture. A certified EPA audit gas shall be used, when possible. A gas mixture containing all the target compounds within the calibration range and certified by EPA's Traceability Protocol for Assay and Certification of Gaseous Calibration Standards may be used when EPA performance audit materials are not available. If a certified EPA audit gas or a traceability protocol gas is not available, use a gas manufacturer standard accurate to 2 percent.

* * * * *

8.3 Seven (7)-Day Calibration Error (CE) Test Period. At the beginning of each 24-hour period, set the initial instrument set points by conducting a multi-point calibration for each compound. The multi-point calibration shall meet the requirements in sections 13.1, 13.2, and 13.3. Throughout the 24-hour period, sample and analyze the stack gas at the sampling intervals prescribed in the regulation or permit. At the end of the 24-hour period, inject the calibration gases at three concentrations for each compound in triplicate and determine the average instrument response. Determine the CE for each pollutant at each concentration using Equation 9–2. Each CE shall be ≤10 percent. Repeat this procedure six more times for a total of 7 consecutive days.

8.4 Performance Audit Test Periods. Conduct the performance audit once during the initial 7-day CE test and quarterly thereafter. Performance Audit Tests must be conducted through the entire sampling and analyzer system. Sample and analyze the EPA audit gas(es) (or the gas mixture) three times. Calculate the average instrument response. Results from the performance audit test must meet the requirements in sections 13.3 and 13.4.

* * * * *

10.1 Multi-Point Calibration. After initial startup of the GC, after routine maintenance or repair, or at least once per month, conduct a multi-point calibration of the GC for each target analyte. Calibration is performed at the instrument independent of the sample transport system. The multi-point calibration for each analyte shall meet the requirements in sections 13.1, 13.2, and 13.3.

* * * * *

10.2 Daily Calibration. Once every 24 hours, analyze the mid-level calibration standard for each analyte in triplicate. Calibration is performed at the instrument independent of the sample transport system. Calculate the average instrument response for each analyte. The average instrument response shall not vary by more than 10 percent from the certified concentration value of the cylinder for each analyte. If the difference between the analyzer response and the cylinder concentration for any target compound is greater than 10 percent, immediately inspect the instrument making any necessary adjustments, and conduct an initial multi-point calibration as described in section 10.1.

* * * * *

13.1 Calibration Error (CE). The CEMS must allow the determination of CE at all three calibration levels. The average CEMS calibration response must not differ by more than 10 percent of calibration gas value at each level after each 24-hour period and after any triplicate calibration response check.

13.2 Calibration Precision and Linearity. For each triplicate injection at each concentration level for each target analyte, any one injection shall not deviate more than 5 percent from the average concentration measured at that level. When the CEMS response is evaluated over three concentration levels, the linear regression curve for each organic compound shall be determined using Equation 9–1 and must have an $r^2 \geq 0.995$.

* * * * *

13.4 Performance Audit Test Error. Determine the error for each average

pollutant measurement using the Equation 9–2 in section 12.3. Each error shall be less than or equal to 10 percent of the cylinder gas certified value. Report the audit results including the average measured concentration, the error and the certified cylinder concentration of each pollutant as part of the reporting requirements in the appropriate regulation or permit.

* * * * *

Performance Specification 18—Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems at Stationary Sources

* * * * *

2.3 The relative accuracy (RA) must be established against a reference method (RM) (*e.g.,* Method 26A, Method 320, ASTM International (ASTM) D6348–12, including mandatory annexes, or Method 321 for Portland cement plants as specified by the applicable regulation or, if not specified, as appropriate for the source concentration and category). Method 26 may be approved as a RM by the Administrator on a case-by-case basis if not otherwise allowed or denied in an applicable regulation.

* * * * *

11.9.1 Unless otherwise specified in an applicable regulation, use Method 26A in 40 CFR part 60, appendix A–8, Method 320 in 40 CFR part 63, appendix A, or ASTM D6348–12 including all annexes, as applicable, as the RMs for HCl measurement. Obtain and analyze RM audit samples, if they are available, concurrently with RM test samples according to the same procedure specified for performance tests in the general provisions of the applicable part. If Method 26 is not specified in an applicable subpart of the regulations, you may request approval to use Method 26 in appendix A–8 to this part as the RM on a site-specific basis under §§ 63.7(f) or 60.8(b). Other RMs for moisture, O_2, etc., may be necessary. Conduct the RM tests in such a way that they will yield results representative of the emissions from the source and can be compared to the CEMS data.

* * * * *

■ 28. Amend Appendix F to part 60, in Procedure 1, by revising section 5.2.3(2) to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination

* * * * *

5.2.3 * * *

(2) For the CGA, ±15 percent of the average audit value or ±5 ppm, whichever is greater; for diluent monitors, ±15 percent of the average audit value.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 29. The authority citation for part 61 continues to read as follows:

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

■ 30. Amend Appendix B to part 61 by:

■ a. Adding the entries Method 114—Test Methods for Measuring Radionuclide Emissions from Stationary Sources and Method 115—Monitoring for Radon-222 Emissions at the end of the index for appendix B to part 61.

■ b. In Method 107, revising section 12.3, equation 107–3.

The additions and revisions read as follows:

Appendix B to Part 61—Test Methods

* * * * *

Method 114—Test Methods for Measuring Radionuclide Emissions From Stationary Sources

Method 115—Monitoring for Radon-222 Emissions

* * * * *

Method 107—Determination of Vinyl Chloride Content of In-Process Wastewater Samples, and Vinyl Chloride Content of Polyvinyl Chloride Resin Slurry, Wet Cake, and Latex Samples

* * * * *

12.3 * * *

$$C_{rvc} = \frac{A_s P_a}{R_f T_1}\left[\frac{M_v V_g}{Rm} + K_p (TS) T_2 + K_w (1 - TS) T_2\right] \qquad Eq. 107 - 3$$

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 31. The authority citation for part 63 continues to read as follows:

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

■ 32. Amend § 63.2 by revising the definition of ''Alternative test method'' to read as follows:

§ 63.2 Definitions.

* * * * *

Alternative test method means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator's satisfaction, using Method 301 in appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

* * * * *

Subpart LLL—National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry

■ 33. Amend § 63.1349, by revising paragraphs (b)(7)(viii)(A) and (B), (b)(8)(vi), and (b)(8)(vii)(B) and (C) to read as follows:

§ 63.1349 Performance testing requirements.

* * * * *

(b) * * *

(7) * * *

(viii) * * *

(A) Determine the THC CEMS average value in ppmvw, and the average of your corresponding three total organic HAP compliance test runs, using Equation 12.

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} X_i, \bar{y} = \frac{1}{n}\sum_{i=1}^{n} Y_i \qquad \text{(Eq. 12)}$$

Where:

$\bar{x}$ = The average THC CEMS value in ppmvw, as propane.

X_i = The THC CEMS data points in ppmvw, as propane, for all three test runs.

$\bar{y}$ = The average organic HAP value in ppmvd, corrected to 7 percent oxygen.

Y_i = The organic HAP concentrations in ppmvd, corrected to 7 percent oxygen, for all three test runs.

n = The number of data points.

(B) You must use your 3-run average THC CEMS value and your 3-run average organic HAP concentration from your Method 18 and/or Method 320 compliance tests to determine the operating limit. Use equation 13 to determine your operating limit in units of ppmvw THC, as propane.

$$T_l = \left(\frac{9}{\bar{y}}\right) * \bar{x} \quad \text{(Eq. 13)}$$

Where:

T_l = The 30-day operating limit for your THC CEMS, ppmvw, as propane.

$\bar{y}$ = The average organic HAP concentration from Eq. 12, ppmvd, corrected to 7 percent oxygen.

$\bar{x}$ = The average THC CEMS concentration from Eq. 12, ppmvw, as propane.

9 = 75 percent of the organic HAP emissions limit (12 ppmvd, corrected to 7 percent oxygen)

* * * * *

(8) * * *

(vi) If your kiln has an inline kiln/raw mill, you must conduct separate performance tests while the raw mill is operating (''mill on'') and while the raw mill is not operating (''mill off''). Using the fraction of time that the raw mill is on and the fraction of time that the raw mill is off, calculate this limit as a weighted average of the SO_2 levels measured during raw mill on and raw mill off compliance testing with Equation 17.

$$R = (y * t) + x * (1 - t) \quad \text{(Eq. 17)}$$

Where:

R = Operating limit as SO_2, ppmv.

y = Average SO_2 CEMS value during mill on operations, ppmv.

t = Percentage of operating time with mill on, expressed as a decimal.

x = Average SO_2 CEMS value during mill off operations, ppmv.

1 − t = Percentage of operating time with mill off, expressed as a decimal.

* * * * *

(vii) * * *

(B) Determine your SO_2 CEMS instrument average ppmv, and the average of your corresponding three HCl compliance test runs, using Equation 18.

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} X_1 \, , \bar{y} = \frac{1}{n}\sum_{i=1}^{n} Y_1 \quad \text{(Eq. 18)}$$

Where:

$\bar{x}$ = The average SO_2 CEMS value in ppmv.

X_1 = The SO_2 CEMS data points in ppmv for the three runs constituting the performance test.

$\bar{y}$ = The average HCl value in ppmvd, corrected to 7 percent oxygen.

Y_1 = The HCl emission concentration expressed as ppmvd, corrected to 7 percent oxygen for the threeruns constituting the performance test.

n = The number of data points.

(C) With your instrument zero expressed in ppmv, your SO_2 CEMS three run average expressed in ppmv, and your 3-run HCl compliance test average in ppmvd, corrected to 7 percent O_2, determine a relationship of ppmvd HCl corrected to 7 percent O_2 per ppmv SO_2 with Equation 19.

$$R = \frac{\bar{y}}{(\bar{x} - z)} \quad \text{(Eq. 19)}$$

Where:

R = The relative HCl ppmvd, corrected to 7 percent oxygen, per ppmv SO_2 for your SO_2 CEMS.

$\bar{y}$ = The average HCl concentration from Eq. 18 in ppmvd, corrected to 7 percent oxygen.

$\bar{x}$ = The average SO_2 CEMS value from Eq. 18 in ppmv.

z = The instrument zero output ppmv value.

* * * * *

■ 34. Amend Appendix A to part 63 by:

■ a. In Method 301, revising section 11.1.3;

■ b. In Method 308, revising section 12.4, equation 308–3 and section 12.5, equation 308–5;

■ c. In Method 311, revising sections 1.1 and 17;

■ d. In Method 315, revising Figure 315–1;

■ e. In Method 316, revising section 1.0; and

■ f. In Method 323, revising the method heading and section 2.0.

The revisions read as follows:

Appendix A to Part 63—Test Methods Pollutant Measurement Methods From Various Waste Media

* * * * *

Method 301—Field Validation of Pollutant Measurement Methods From Various Waste Media

* * * * *

11.1.3 *T Test.* Calculate the t-statistic using Equation 301–13.

$$t = \frac{|d_m|}{\left(\frac{SD_d}{\sqrt{n}}\right)} \quad \text{(Eq. 301-13)}$$

* * *

* * * * *

Method 308—Procedure for Determination of Methanol Emission From Stationary Sources

* * * * *

12.4 * * *

$$E = \frac{M_{tot}\, Q_{std}}{V_{m\,(std)}} \qquad \text{Equation 308-3}$$

12.5 * * *

$$R = \frac{m_v\, v_s}{s} \qquad \text{Equation 308-5}$$

* * * * *

Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph

* * * * *

1.1 Applicability. This method is applicable for determination of most compounds designated by the U.S. Environmental Protection Agency as volatile hazardous air pollutants (HAP's) (See Reference 1) that are contained in paints and coatings. Styrene, ethyl acrylate, and methyl methacrylate can be measured by ASTM D 4827–03. Formaldehyde can be measured by ASTM D 5910–05 or ASTM D 1979–91. Toluene diisocyanate can be measured in urethane prepolymers by ASTM D 3432–89. Method 311 applies only to those volatile HAP's which are added to the coating when it is manufactured, not to those that may form as the coating cures (reaction products or cure volatiles). A separate or modified test procedure must be used to measure these reaction products or cure volatiles in order to determine the total volatile HAP emissions from a coating. Cure volatiles are a significant component of the total HAP content of some coatings. The term ''coating'' used in this method shall be understood to mean paints and coatings.

* * * * *

17. * * *

4. Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph. ASTM Designation D4457–02.

5. Standard Test Method for Determining the Unreacted Monomer Content of Latexes Using Capillary Column Gas Chromatography. ASTM Designation D4827–03.

6. Standard Test Method for Determining Unreacted Monomer Content of Latexes Using Gas-Liquid Chromatography, ASTM Designation D4747–02.

* * * * *

Method 315—Determination of Particulate and Methylene Chloride Extractable Matter (MCEM) From Selected Sources at Primary Aluminum Production Facilities

* * * * *

BILLING CODE 6560–50–P

Figure 315-1. Particulate and MCEM Analyses

Particulate Analysis			
Plant			
Date			
Run No.			
Filter No.			
Amount liquid lost during transport			
Acetone blank volume (ml)			
Acetone blank concentration (Eq. 315-4) (mg/mg)			
Acetone wash blank (Eq. 315-5) (mg)			
	Final weight (mg)	**Tare weight (mg)**	**Weight gain (mg)**
Container No. 1			
Container No. 2			
Total			
Less Acetone blank			
Weight of particulate matter			
	Final volume (mg)	Initial volume (mg)	Liquid collected (mg)
Moisture Analysis			
Impingers	Note 1	Note 1	
Silica gel			
Total			
NOTE 1: Convert volume of water to weight by multiplying by the density of water (1 g/ml).			

Container No.	**Final weight (mg)**	**Tare of aluminum dish (mg)**	**Weight gain**	**Acetone wash volume (ml)**	**Methylene chloride wash volume (ml)**
MCEM Analysis					
1					
2 + 2M					
3W					

3S					
Total			Σm_{total}	$0V_{aw}$	ΣV_{tw}

Less acetone wash blank (mg) (not to exceed 1 mg/l of acetone used)	$w_a = c_a p_a \Sigma V_{aw}$
Less methylene chloride wash blank (mg) (not to exceed 1.5 mg/l of methylene chloride used)	$w_t = c_t p_t \Sigma V_{tw}$
Less filter blank (mg) (not to exceed 0.5 mg/filter)	F_b
MCEM weight (mg)	$m_{MCEOM} = \Sigma m_{total} - w_a - w_t - f_b$

Method 316—Sampling and Analysis for Formaldehyde Emissions From Stationary Sources in the Mineral Wool and Wool Fiberglass Industries

1.*0 Scope and Application*

This method is applicable to the determination of formaldehyde, CAS Registry number 50–00–0, from stationary sources in the mineral wool and wool fiber glass industries. High purity water is used to collect the formaldehyde. The formaldehyde concentrations in the stack samples are determined using the modified pararosaniline method. Formaldehyde can be detected as low as 8.8×10^{-10} lbs/cu ft (11.3 ppbv) or as high as 1.8×10^{-3} lbs/cu ft (23,000,000 ppbv), at standard conditions over a 1-hour sampling period, sampling approximately 30 cu ft.

* * * * *

Method 323—Measurement of Formaldehyde Emissions From Natural Gas-Fired Stationary Sources—Acetyl Acetone Derivatization Method

* * * * *

2.0 Summary of Method. An emission sample from the combustion exhaust is drawn through a midget impinger train containing chilled reagent water to absorb formaldehyde. The formaldehyde concentration in the impinger is determined by reaction with acetyl acetone to form a colored derivative which is measured colorimetrically.

* * * * *

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